CHAPTER 11

Can (and Should) States be Held Responsible for Environmental Displacement?

As concluded from the two previous parts, neither refugee law nor international human rights law can offer fully appropriate solutions to the problem of environmental displacement. It is therefore necessary to turn to broader international law and analyse whether States bear any obligation to prevent or else react to environmental displacement. According to M. Fitzmaurice, the question whether States are legally responsible for climate change should be examined within the broader context of State responsibility for environmental damage.1

It is commonly stated: it is not environmental degradation *per se* that alone triggers displacement. Instead, the causes are multiple and interrelated,2 so much so that disentangling them may prove challenging if not impossible and drawing the line between voluntary and forced migration a conundrum.3 Likewise, literature indicates that environmental degradation itself often has a plurality of causative sources; it also has a variety of short-term and long-term impacts. This has been made particularly clear in the context of a growing interest for the actual and projected impacts of climate change. Climate science shows that, if certain regions are at higher risk of experiencing the

---

2 A. Suhrke (1994), *op. cit.*, The complexity of causes was notably evidenced in a joint report by the United Nations University and UNHCR who, on the basis of interviews with refugees from the East and Horn of Africa and with actors involved and field visits examined the perceptions and experiences of displaced persons. Drivers for migration can include external and personal circumstances such as environmental factors, violence, financial resources, social networks in the destination area or education and skills. T. Afifi, *et al.*, *Climate Change, Vulnerability and Human Mobility: Perspectives of Refugees from the East and Horn of Africa* (June 2012), *op. cit.*
harmful impacts of climate change for reasons pertaining to their geographical situation, the effects of global warming on a region’s environment will also be in large part determined by a series of factors, ranging from political or economic to demographic circumstances. The same is true of any environmental degradation, be it connected with climate change or not. The severity of its impacts on affected population and territory will be of varying intensity, scale and duration depending on the region’s level of preparedness to environmental degradations, its technological advancement, its ability (including financial) to react and adapt, its resilience capacity, the density of its population and the possible availability of international assistance and support. Some of those factors entail elements of State responsibility; some others do not, or hardly so. In fact, M. Fitzmaurice warned that the question of whether States were legally responsible for climate change was “one of the most complicated and debated issues”.

In short, the sources and consequences of environmental degradation are often multiple. The same goes for the drivers of migration. Therefore, the question of the attributability of environmental displacement takes shape as a complex problem, involving many variables. The purpose of this Chapter is to determine whether the benefits of a responsibility-based approach to environmental displacement are worth the endeavour.

An approach based on State responsibility in fact soon manifests itself as inappropriate to effectively address the issue of environmental displacement. For that reason, only the main aspects of the question which are also the main obstacles to the responsibility-based approach will be discussed below.

The responsibility of States for internationally wrongful act is regulated under customary international law. Those rules have been codified and are presently formulated in the Articles on the Responsibility of States for internationally wrongful acts, adopted by the International Law Commission in 2001.

---

5 For a definition of “resilience capacity”, see for example the “resilience capacity index” developed by Kathryn Foster (University at Buffalo Regional Institute, State University of New York) and described at: <http://brr.berkeley.edu/rci/> [accessed 10/06/2012].
7 Although not every ILC Article on State Responsibility reflects custom, for some of them, this status is undisputed. It includes in particular Article 2.