A former Secretary General of the UN General Assembly stated in a press conference that the world is expected to have over 50 million refugees by 2020. Issues relating to refugees have existed since the conclusion of the World War-II, however its nature has changed. Today, displacement is not just caused by threat of persecution by home State, but also by extensive climate change, a ground which is not recognized for the grant of refugee status under the Refugee Convention. States cite the Convention as a justification for refusing entry to these individuals. However, the winds of change have given rise to the concept of environmental refugees which presents an emerging change in jurisprudence surrounding the subjects, thereby demanding the inclusion of people displaced by climate change, under the definition of refugee. The present article delves into this new phenomena and attempts to find an answer to this demand raised in light of the recent events in the world, while also proposing remedies for a proper mechanism.

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I. INTRODUCTION

“The world will have over 50 million refugees by the year 2020.”

-Ban Ki Moon (Former Secretary General, United Nations)

In common parlance, one would use the term “refugee” to mean a person who has fled his home country due to a threat to his life, but the term “environmental refugee” appears to be alien to the general population. The reason for the same is the novel nature of the term. This term has been held to mean exodus from the home country due to natural disasters.

Internationally, refugees are granted certain protections under the Convention Relating to the Status of Refugees, 1951 (“CRSR”) and the Protocol Relating to Status of Refugees (“PRSR”). Article 1(A)(2) of these conventions provide that a person is a refugee if he/she is fleeing persecution from their home country on grounds of race, nationality, religion etc. and only the fulfilment of these grounds entitle a person to attain refugee status, thereby availing the privileges that come with it. However, the CRSR and PRSR, being conventions that were drafted around six decades ago, do not take into account persons who flee their country on grounds of natural calamities, as the drafters did not envision that natural disasters could also cause a mass-displacement of individuals. As a result, environmental refugees were excluded from the purview of these conventions. The wrath of such exclusion has primarily been faced in the Eastern African region which, due to its deplorable natural condition, gives rise to the maximum environmental refugees in the world.

The lack of an updated definition not only denies them the protection offered to refugees

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under the conventions but also makes it difficult for them to return to their home country after they leave it.

The author, through this paper, attempts to build a case for the environmental refugees and puts forth arguments for their inclusion in the definition of “refugees” under the Conventions, with a special focus on the condition in eastern Africa. Part II of the paper discusses the history of refugees under international law. Part III sheds light on the emergence of the concept of environmental refugees. Part IV puts forth the arguments for and against the inclusion of the environmental refugees in the conventions. Part V concludes the paper with a discussion on the eastern African situation and incorporating the requisite suggestions.

II. REFUGEE UNDER INTERNATIONAL LAW: REVISITING HISTORY AND UNDERSTANDING THE PRESENT

A refugee in the most primitive form was referred to as someone who flees due to fear of persecution or is expelled from his country and seeks asylum in a different country. The history of refugees goes back to the medieval era wherein the Church performed the function of granting protection to individuals who had been persecuted in their home countries. Then, in the post medieval and modern times, these individuals were termed as refugees by the League of Nations High Commission for Refugees in 1921. Later, the regulating body for refugees i.e. the United Nations High Commissioner for Refugees [“UNHCR”] was established by the General Assembly, which worked in collaboration with countries to formulate and draft the CRSR and the PRSR.

The two conventions defined a “refugee” as a person who flees persecution from his home country on grounds of race, religion, nationality etc. The convention when drafted was primarily directed towards catering to the European refugees facing the wrath of the second world war and was hence short-sighted. Its main objective was to provide protection to these

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7 Refugee Convention, supra note 3, at Art. 1.
migrants and to ensure the adherence to their human rights as required by the Universal Declaration of Human Rights [“UDHR”]. It placed an obligation on every State to admit persons who fulfil a criterion under the convention as a refugee in their territory and fulfil their basic human rights.

The convention was successful in achieving its purpose for a decade or so but, could not keep up with the dynamism persistent in the international scenario. The major area wherein this lack of dynamism in the conventions was observed was in its criteria of persecution. When the conventions were drafted the meaning of persecution was restricted to treatment that was violent, cruel on grounds of religion and race, as such kind of treatment was common during the world wars and was the primary reason why people fled their countries. However, with the passage of time the international scenario saw emergence of other grounds for the fleeing of citizens. One such ground was change in natural environment i.e. climate change, droughts, famines etc. Due to the restrictive nature of the definition of the refugees, the people fleeing countries due to these reasons were not termed as refugees per se and were not granted any kind of protection. Lack of recognition on part of the States led to the emergence of the concept of environmental refugees and the demand for their recognition within the conventions.

III. THE EMERGENCE OF ENVIRONMENTAL REFUGEES

Even though there are numerous Conventions on refugees, none of them grant protection to people fleeing their home State due to environmental disasters. However, multiple jurists came up with the demand of expanding the meaning of the term persecution on grounds that the same was outdated and needed modification, as the reasons for

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13 RV Anuradha, On A Displaced Person, 6 STUD. ADV. 52 (1994) [hereinafter Displaced Person].
displacement today are more complex and permanent as compared to those envisaged under the Convention. They contended that a person, who has no water from drought, has no food due to flooding, is left with no choice but to flee. Hence, grounds of natural disasters like famine and drought were suggested to be included in the definition of refugee, following a rights oriented approach, i.e. the rights under ICCPR, CESCR.

A term identifying these people was coined by Prof. Lester Brown, who termed them as environmental refugees, signifying people that are forced to leave their home due to changes in the environment around them, compromising their well-being and livelihood. The presence of these refugees became so widespread that as per the Internal Displacement Monitoring Centre (“IDMC”), one out of two displaced persons was so by virtue of a disaster, and an average of 22.5 million had been displaced in the world due to the same. Despite such daunting figures, the issue of environmental refugees did not receive any attention from the States. However it did receive recognition from the UNHCR.

With the passage of time not just the UNHCR, but even the European Commission (“EC”), has agreed on the impact of climate change on human migration and termed it as a “crisis in the making”, thereby calling for an academic inquiry on the same. Today, such a

17. Seminar on Refugees, supra note 12.
broad definition stands accepted by Convention Governing the Specific Aspects of Refugee Problems in Africa and the Cartagena Declaration. However, such recognition carries an ambiguity with respect to the degree of climate change and in determining the required effect of climate or natural disaster to categorize one as an environmental refugee, otherwise every person fleeing their country would take environmental disaster or threat as an alibi.

This problem has been answered with a four step test laid down by Professor Irene Khan, that states a person is qualified as an environmental refugee if he (or she) by (i) voluntary movement, (ii) crosses international boundary, (iii) due to a rapid trigger, (iv) which is linked to climate change. Also, it is mandated that such migration should necessarily have environmental reason as the main factor for the flight, any sort of politicisation and corruption was held not to be environmentally induced and was not protected under migration management regimes. Following the same, the refugees who migrated from Liberia during the civil war were not termed as environmental refugees due to lack of a direct connection between the war and deforestation (an outcome of climate change).

IV. STATE RECOGNITION OF ENVIRONMENTAL REFUGEES: STATE PRACTICE, SOVEREIGNTY AND HUMAN RIGHTS

A primary issue that arises with respect to environmental refugees and their international recognition is the unwillingness of States to accept the same in their territory on

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29 Id.
grounds of the CRSR and PRSR. The recent judgment of the New Zealand Supreme Court in the case of *AF (Kiribati)* is pertinent to this discussion. In the referred case, the Court rejected an application for the grant of refugee status on grounds of climate change in the Pacific Island nation of Kiribati. The reasoning of the Court was based on the lack of environmental degradation as a ground under the Refugee Convention. However, New Zealand was not the first State to refuse entry to an environmental refugee; this has previously been done by the Australian Courts, and even the Indian government.

It is noteworthy to mention here that the New Zealand Court failed to take account of the limited capacity of Kiribati to take care of its population because of the ongoing crisis. Such failures, giving rise to refugees, raises questions on the justification given by States to deny entry to people who are displaced on environmental grounds. The author, in this part of the paper, will analyse such reasoning of the State, while also countering the same with arguments in favour of these refugees.

**A. The Floodgate Argument**

The most common reasoning that was also adopted by the Court in *AF Kiribati*, was the “floodgate reasoning”, wherein States contend that if they accept a person who amounts to an environmental refugee, the same would open doors for millions who are facing similar deprivation, accepting whom would not be economically feasible for the State as witnessed in the Macedonia case where the country refused to grant entry to the refugees on the ground of lack of resources to cope with the influx. This argument appears untenable on the face of

34. *Id.*
it as the UNHCR has pledged to provide for funds to countries who accept such refugees, thereby making the contention of the States completely invalid. 39

**B. THE SELF-DEFENCE ARGUMENT**

The most cogent argument relied on by the States is the self defence argument. Article 51 of the United Nations Charter ["UN Charter"] allows a member State the right of self-defence if it anticipates an armed attack. 40 However, the States have contended that the same is not just restricted to mere armed attacks, 41 and include massive exodus of refugees as a threat too. 42 The States relying on the conventions state that there exist justifications for departure if the persons pose a danger to the security of the country. 43 Therefore, the States use this argument to contend that refugee flows have the capability of threatening the stability of the receiving countries, 44 which is why they do not allow the same. This argument despite being the most tenable falls short of taking into consideration the basic human right of life and survival, to which every individual is entitled. This shall further be discussed through the subsequent part of the article. 45

**C. THE SOVEREIGNTY ARGUMENT**

The States raise respect for sovereignty as a ground for rejecting refugees and argue that they have the sole discretion to determine whether a foreigner should be given entrance to their dominion. 46 Thus, they justify the act of not granting entry to environmental refugees as an exercise of their sovereignty. 47 So much so, that States also try to evade the principle of non- refoulement, which obligates every State to protect an individual whose life is threatened,

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40 United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XV, art. 51.
43 Refugee Convention, supra note 3 at art. 1(f) & 33.
47 Forced Displacement, supra note 31.
on grounds that the same is applicable for refugees in the territory of the host States\textsuperscript{48} and not the border,\textsuperscript{49} thereby terming their acts of refusing entry valid if the refugees are at the border.

The States no doubt raise compelling arguments to support their stance of non-entry to the refugees but the same fall short on humanitarian grounds, as sovereignty of a State cannot be a justification for it to commit human right violations and non-entry to these refugees in a way leads to their human rights being violated.

The author now presents arguments put forward by the supporters of environment refugees:

A. THE NON-REFOULEMENT ARGUMENT

The principle of non-refoulement provides for the protection of refugees from being returned to places where their lives are threatened.\textsuperscript{50} This principle, which has not only attained the status of customary international law\textsuperscript{51} but also a \textit{jus cogens} norm,\textsuperscript{52} obligates the States to protect such refugees.\textsuperscript{53} Therefore, by virtue of the binding nature of the principle, every State is bound to allow an environmental refugee entry into their territory whose life is threatened due to the existence of a natural disaster.

B. THE HUMAN RIGHTS ARGUMENT

Since refugee law is concerned with the identification and guaranteeing the rights of refugees, it has a fundamental link with human rights law.\textsuperscript{54} Especially in cases of mass influx, the States have been held to have a minimum obligation to ensure admission for safety,
security and respect for basic human rights. These basic human rights have not been held subordinate to peace and security, as the basic necessary rights of individuals prevail over rights of security. Hence, refuge cannot be denied on grounds of peace and security.

C. THE RECOGNITION ARGUMENT

The Conventions on refugees when enacted did not cover natural disasters i.e. events occurring due to unstable environment. However, the concept of these environmental refugees today has received international recognition as the UNHCR has undertaken steps to help them, thereby, indicating their inclusion under the definition of the convention.

A scrutiny of the above arguments supporting the inclusion of environmental refugees in the definition of refugees presents a better case as they primarily rest on humanitarian grounds rather than private concerns of the State. The author, in the next part, concludes the paper by providing recommendations to make the existing model more efficient and effective.

V. THE CURE TO 50 MILLION ENVIRONMENTAL REFUGEES: RECOMMENDATIONS AND SUGGESTIONS

The present paper discusses the concept of refugees and how the definitions required an expansion to include environmental refugees too. However, after discussing arguments from both sides, it is clear that there needs to be dynamism while interpreting the term refugees and States need to accept these individuals in the interests of upholding the basic tenets of human rights. Despite the same, the current model is not fool proof and has certain

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55 Non-Refoulement Principle, supra note 37.
59 Climate Change UNHCR, supra note 21.
The author now provides certain recommendations to improve the working of the system, so that it achieves the purpose behind the same:

A. Setting up Similar Initiatives as Nansen

The UNHCR in furtherance of its initiative to protect refugees has come out with multiple initiatives. One such initiative was the “Nansen initiative” wherein they aimed at protecting the people who were displaced across borders in context of disasters induced by climate change. Nansen organises and facilitates inter-governmental regional consultations, fosters the discussions surrounding climate refugees and also advocates States to accept these. It was the Nansen Conference on Climate Change and Displacement in Oslo (June 2011) that ultimately led to Norway and Switzerland pledging at the UNHCR Ministerial Conference in December 2011 to address the need for a more cogent approach for protection of climate refugees. However, given the restriction of this initiative to 9 countries, similar initiatives can be undertaken by the other states or the UNHCR so as to uplift and address the condition of the refugees and ensure that they get refuge.

B. Reorienting the Definition of Refugee

A major hurdle faced by an environmentally displaced person is the lack of environment as a ground under the conventions. Considering the volume of such people and their plight, the definition of refugee should be expanded so as to include climate change as a ground for persecution. An alternative option could be the establishment of a new category which grants legal status to individuals that lose homes due to climate change. Even if these people are not granted the same protection as refugees, they can be offered certain basic temporary reliefs in the form of entry in the borders, till the situation in their home country improves.

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C. RESOLVING THE DICHTOMY BETWEEN NATURAL AND MAN-MADE INDUCED NATURAL DISASTERS

A mistake that has been committed by the propounders of the concept of environmental refugees is treating natural factors in the same manner as man-made induced natural factors. The convention needs to clearly bifurcate the two as the former is a permissible ground for categorisation as ERs while the latter is not.

D. FORMING SOLUTION ALLIANCES

The States opposing ERs justify the same on grounds of economic considerations and self-defence. These concerns can be handled in form of alliances which facilitate the economic concerns mentioned. This demand for alliance has previously been raised by the UN Office for the Coordination of Humanitarian Affairs [“UNOCHA”]. Such an alliance could be achieved by developing a quota of such environmental refugees which will be accepted by every country. Second, pooling of financial resources could be another alternative to tackle the economic concerns of the States.

The concept of environmental refugees which was once alien to the world has become a legal conundrum today. These refugees might not have recognition under the Refugee Conventions, but there has been persistent demand for expansion of the definition. Arguments of non-refoulement and humanitarian considerations have been put forward to justify this stance. This demand is striking especially in Africa which is most vulnerable to climate change; so much so that the UNHCR has estimated that over 700,000 Sudanese nationals

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64 Brian Palmer, There is no such thing as climate change, Nov. 16, 2015, available at https://www.nrdc.org/onearth/theres-no-such-thing-climate-change-refugee.

have fled the State following years of chronic drought. These individuals have been granted refugee status in countries like Eritrea, Ethiopia, Somalia and Uganda, but every refugee in the world is not as privileged as the Sudanese migrants, as even today States deny entry to refugees citing the above mentioned conventions as a reason. Therefore, there exists an imminent need for recognition of these environmental refugees as refugees under the convention.

The present scenario of environmental refugees can be briefly summarised in the words of present Secretary-General of the United Nations, Antonio Guterres “Refugees are not terrorists, they are often the first victims of terrorism.” Let us hope that the States do take note of the plight of these environmental refugees who are forced to leave their home countries for reasons beyond their control.

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67 Id.