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New initiative to protect “environmental refugees”: good but not yet sufficient

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Bonn, 2 April 2013. While the world's Christians have been celebrating Easter in the past few days, religious persecution continues to cause flight and expulsion in many countries even in Anno Domini 2013. Like the politically persecuted and refugees from war, these people have since 1951 been granted – in theory at least – the special protection of the Geneva Refugee Convention, which guarantees, among other things, protection against expulsion. This does not apply to “climate refugees”, to whom growing attention is being paid in the public debate on migration and the protection of refugees. Depending on the source consulted, they are a consequence of global warming and a threat to our security and prosperity, or they are doomed to an unavoidable humanitarian disaster. Both views frequently overlook the complexity of migratory processes and the special features of the transboundary protection of refugees under international law.

It is true that menacing environmental changes and natural disasters due to global climate change will continue to grow in number and that this may also influence the migratory behaviour of the people affected, particularly under conditions of poverty. It is also true that international policy lacks suitable instruments and sets of rules for coping with environmental migration appropriately, especially in the case of international migration: people who leave their country of origin because of flooding or some other natural disaster have hitherto been in danger of falling through the net of international protection rights and migration rules. The Nansen Initiative launched by Norway and Switzerland and named after the League of Nations' first High Commissioner for Refugees, Fridtjof Nansen, is now preparing to develop appropriate solutions to fill the obvious gap in protection. It has explicitly set itself the goal of improving legal protection for people forced by natural disasters to flee their countries and, to this end, it has encouraged a broadly based international consultative process, which included a meeting of experts held on the campus of the

United Nations University in Bonn, Germany, in early March 2013.

Indeed, the media hype about millions of “climate refugees” misses the point in some important respects. The Nansen Initiative is welcome if only because it generally considers the link between migration and environmental disasters and does not confine itself to the consequences of climate change. Although the question of the effects of climate change on migratory behaviour attracts particular interest, it will not be possible in the foreseeable future to give a sound answer to questions like whether or not this flood disaster or that hurricane is in itself a direct result of global warming. Furthermore, any restriction to “climate refugees” would logically exclude migration due to other natural disasters clearly not caused by climatic phenomena, such as earthquakes and volcanic eruptions. But what political justification can there be for improving the protection rights of the victims of flooding, but not those of earthquake victims?

Despite this, the Nansen Initiative is couched in rather restrictive terms and leaves a number of questions unanswered. A precise definition of those whose protection rights are to be improved is, for example, far more difficult than it might at first appear. Migration, after all, is rarely attributable solely to environmental factors. Social, economic or political factors almost always play an important part in migration decisions. Is an African peasant who migrates because his land has degraded and his harvests have therefore declined automatically an environmental migrant? Or does the absence of alternative employment rather make him an economic migrant? Unequivocal answers to such questions are virtually impossible. It is equally impossible to make a clear distinction between voluntary migration and forced migration. It can at best be said that in the rarest of circumstances can migration in response to environmental change be described as flight to rescue life and limb or worldly goods. The current status of knowledge suggests it is more a question of the

voluntary migration of individual members of predominantly peasant households who – usually for a limited period – go elsewhere to live and work. If, despite adverse circumstances, they manage to earn some money, they usually help the family they have left behind to cope with the unfavourable consequences of environmental changes, as when drought leads to the loss of harvests and so to a shortage of food. Environmental incidents do not, then, necessarily result in permanent displacement, let alone flight: migration may simply be an important adaptation strategy.

A critical look also needs to be taken at the Nansen Initiative's focus on transfrontier migration, since by far the most environment-related migration occurs as internal migration, i.e. within a country's borders. International migration, between sub-Saharan Africa and Europe, for example, has hitherto had very little to do with environmental change. But even in the case of internal displacement there is still a serious need to improve the protection rights of those affected, regardless of whether environmental incidents were the determining factor. After all, the United Nations' *Guiding Principles on Internal Displacement* are, as the name says, guidelines, not internationally binding legal standards.

What is still completely open is how the Nansen Initiative might be incorporated in the UN system or other frameworks that are binding in international law. The commendable initiative taken by Norway and Switzerland is due not least to the realisation that the political will to seriously consider the issue of environmental migration is currently lacking in pertinent UN bodies. Nor has it yet been clarified whether or how existing, but individually inadequate legal instruments in the

human rights or international environmental law spheres might be integrated into the Nansen Initiative.

Despite all this, it should be borne in mind that the Nansen Initiative is an attempt, as timely as it is appropriate, to improve the legal protection afforded to migrants forced to leave their home countries by environmental incidents. It is particularly gratifying to see that the Nansen Initiative is not only attracting greater international attention to the subject of migration in the context of environmental and climate change, but also helping in a pragmatic way to overcome the rather pointless excitement about "climate refugees" in favour of a more reasonable approach. Yet, coping with the complex of problems arising from the interaction between environmental change and migration will require more profound measures. If, for example, the development potential of migration is to be tapped, so that people in the areas affected by environmental change can be helped to adapt successfully, political decision-makers at all levels – from local to international – are required to govern in a more migration-friendly manner. That will mean, among other things, actively assisting migrants in their search for housing and employment as well as improving their living and working conditions. The prevailing nation-state paradigm, according to which migration must first and foremost be limited and curbed, no longer seems appropriate to current circumstances, given the real challenges to be faced. Even though a direct causal link between global climate change and an individual's decision to migrate cannot be proved beyond doubt, migration remains a legitimate adaptation strategy whose significance will hardly diminish in the years and decades to come. The opposite is far more likely.