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An Alternative Introduction: An Interview with the Editors, Which Never Took Place

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This interview never took place, and the interviewer is a fiction of the editors' imagination. The fact that she is a fiction of the editors' imagination is entirely immaterial. The frustration felt by the interviewer was very real, and so was her annoyance with some of the editors' answers. The critical questions that she asks are also very real, and so are the discussions that ensue – they all took place in the real world at one point or another, with colleagues, IGO and NGO officials, and members of the public.

There is no great love, nor friendship, between the imaginary interviewer and the editors, and this is for the best. Interviews conducted by friends are often lacking in criticism and cushioned by personal attachments. Despite being the creation of the editors' imagination, the interviewer had no intention of making their lives easy, nor was she going to allow them to slip into a PR-style interview that will improve sales and academic invitations. The interviewer was determined to place a mirror in front of the editors, demanding answers on why they think such a book is necessary, what more there is to say on this topic, and why on earth did they insist in this title. As will be clear, the interviewer had her doubts regarding all of these.

The imaginary interviewer clicks on the video call's link, the three exchange (fake) pleasantries, and so the interview begins.

A New Book: The Why, the Who, and the What

INTERVIEWER

('INTW.');

So, a book on disaster-displacement. Why now?

EDITORS ('EDS.');

Actually, we address them in the book as climate ref-

INTW.:

We'll get there, don't worry. But, first, what changed in the last three years – I can see in my notes that you published

two books on this topic just three years ago – to justify, yet another book from you?

EDS.: So, you are asking why we decided to edit another book?

INTW.: No, I ask why do we need *another* book, and why so soon after your other books were published.

EDS.: For several reasons. To begin with, we wanted to shed light on angles that were not addressed in our previous books, and which for that matter have been little explored elsewhere, such as the question of the impacts on and the rights to mental health, which Margaretha Wewerinke-Singh and Melina Antoniadis discuss in detail in their chapter. We also thought that it would be useful to bring many more local perspectives this time; to connect wider, global developments with movements on the micro level. And readers will find in this book a review of different regions and countries. For example, Angelique Pouponneau writes about the unique perspective of Small Island Developing States, and so do Robert Oakes, Kees van der Geest and Cosmin Coredea. Camilla Schloss writes about asylum decisions from German courts; Tyler Giannini and Ayoung Kim look at governance and resiliency in the US; Beatriz Felipe Pérez provides some focus on Mexico, and Diogo Andreola Serraglio, Fernanda de Salles Cavedon-Capdeville and Aline Burni, are doing the same, about Brazil. Also –

INTW.: Please, I must stop you here – the readers can look at the table of contents and read this information on their own. My question is more specific, why now? What happened since your last books that justifies another?

EDS.: Ah, sorry, yes, new developments. So, perhaps surprisingly, quite a lot has happened in the last three years, especially considering the inaction that characterised this field for so long – a textbook case study of international impotence. For many years, the most significant development was a rather marginal mentioning of climate migration in a UNFCCC decision from 2010.¹ And now, in three years, we suddenly have the Global Compacts, the UNFCCC Task Force, -

INTW.: That's interesting, stop there for a second. The Global Compacts are, with all due respect, non-binding political declarations. Yes, we all celebrated them, a change in political mood and all that, but hardly a 'development', at least not in terms of law and policy.

¹ UNFCCC, Decision 1/CP.16 para 14(f).

- EDS.: Well, Jolanda van der Vliet and Frank Biermann may in fact agree with you, or at least with your tone. These authors are very critical about the contribution made by the Global Compacts, and they will probably agree that these statements did not add much in terms of creating new legal rights for climate refugees. But at the same time, these authors do recognise that the Global Compacts represent ‘cautious steps forward in the recognition of the protection needs of climate migrants and the responsibilities of the international community’.² And this recognition is in fact really important. It-
- INTW.: Recognition. Big deal. We had recognition already in the Cancun Agreements – the famous paragraph 14(f) that every doctoral student writing on this topic knows by heart³ – and then, once again, also in the Paris Agreement in 2015. I am sorry, but this is not really new. The ‘recognition’ was there before, and what we have here are, again, mere non-binding statements, with no new legal rights. Call me a sceptic, but I will hold off on the celebrations.
- EDS.: Perhaps you are correct that the celebrations are premature. But please allow us to make three points, and please, if possible, stop cutting us off.
- INTW.: I’ll do my best. Go on.
- EDS.: Our first point is that this recognition is perhaps not entirely novel, but it is certainly important. We are very lucky to include a chapter from the IOM’s Mariam Traore Chazalnoel and Dina Ionesco, both of whom are involved in, and aware of, the dynamics of international discussions on this topic. They tell us how things are changing, and in what ways this acknowledgment is important in practice. For example, they mention the fact that the UNFCCC Taskforce Report’s recommendations were adopted unanimously, and add that ‘[t]his is a difference from a few years ago when some states were not ready to even accept the notion that migration in the context of climate change was a reality’.⁴ These authors are also telling us that some states are already adopting implementation plans for the Global Compacts, and are, indeed, addressing climate change in these plans.⁵ So as you can see, the Global Compacts, even if not adding much in terms of legal rights, are far from unimportant. And -

² See Chapter 4 in this volume. ³ Para 14(f) (n 1). ⁴ See Chapter 3 in this volume.

⁵ See, for example, the African Union’s GCM’s implementation plan, here <https://au.int/sites/default/files/newsevents/workingdocuments/37472-wd-3_year_implementation_plan_of_action-english.pdf>. Beatriz Felipe Pérez reports in Chapter 9 also about similar efforts made in Latin America. See Chapter 9 in this volume.

INTW.: And I believe that the word that you are looking for here is momentum?
 EDS.: Yes, exactly. The picture portrayed by these authors is certainly related to momentum, and, importantly, the potential evolution of new norms. Didn't you say that you would stop interrupting us?

INTW.: . . .

EDS.: Anyway, back to the creation of a new momentum. Elin Jacobsson argues that events such as the creation of the UNFCCC Taskforce on Displacement and the conclusion of the Global Compacts have indeed created a unique window of opportunity. This momentum, she claims, might facilitate the evolution of new norms with respect to climate-induced migration. In light of these developments, she argues, 'advocates of norms of climate-induced migration should prepare to seize contingencies and make them favourable for the processes on this issue'.⁶ So there is that – a new momentum and a new opportunity for legal reforms.

And lastly, there is also van der Vliet and Biermann's conclusion regarding the recognition in *states' responsibility*. Indeed, enforcing the link between climate change and migration is allowing us to see more clearly the responsibility of states towards climate migrants. And this could be meaningful, especially when seen in the light of another important development – the rise of climate-migration litigation.

INTW.: In theory perhaps, but I wouldn't say that there is such a thing as a 'rise' of climate-migration litigation. After all, with all due respect, at least for now we are speaking only about one case – *Teitiota*.

EDS.: Actually, no, there is more to this. But let's start with the *Teitiota* case, especially as you asked us to focus on major developments that justify new literature on this topic. So there is quite a lot about this celebrated case in this book, some of it, perhaps, will be surprisingly critical. It is interesting to see how, despite early celebrations, different scholars are viewing this decision in different ways. Some of the authors in this book, like Khaled Hassine, view this decision as ground-breaking, cementing the relations between substantive human rights obligations and the concrete protection of climate refugees. Others, like Sumudu Atapattu, take a more cautious approach, acknowledging that this is certainly a positive development, but also recognising that the legal thresholds imposed by the Human Rights Committee may be too high to benefit future claimants. We also wrote about this decision-

⁶ See Chapter 5 in this volume.

- INTW.: This is all very important. But my comment, once again, addressed your claim that there is such a thing as ‘climate-migration litigation’. One decision does not create a ‘phenomenon’.
- EDS.: As we said, there is more to it. We have written our own chapter in this book about the link between climate litigation and climate migration. Everyone speaks these days about climate litigation, but we noticed that many of these cases are in fact addressing also migration. Claimants are explicitly mentioning migration in their arguments, and are also asking for relevant remedies. We are raising the possibility that if, indeed, policy makers will not offer solutions, courts will. And perhaps, at least to a certain extent, they already do. Camilla Schloss writes about an element that is often ignored in climate-induced migration literature, namely the role that environmental considerations are *already* playing in asylum cases in domestic courts. She shows that even if the term ‘climate refugee’ is indeed very far from being recognised, environmental considerations are, in fact, being taken into account by judges. And this finding is interesting, because it links with what we alluded to in our own chapter – if governments are not moving forward, perhaps the answer will come from courts. Perhaps –
- INTW.: Again, your own writing is surely fascinating, but I would like to ask you about other things. You mentioned before that the authors in this book are providing local insights. And this is of course interesting, because it shows whether indeed the global developments are cascading – whether governments are indeed moving forward. Tell me, what did they find?
- EDS.: Inconclusive results, mostly. On the one hand, it is clear that in some corners of the worlds, governments are moving forward. In his chapter, Ezekiel Simperingham writes about developments in the Asia Pacific region, including on national plans adopted by certain countries that are aimed to address climate-induced migration. He points at a very specific, and crucial, component in these plans – the role assigned to local communities and the manner in which community-based practices are improving the implementation of national policies. Beatriz Felipe Pérez writes about the situation in Mexico, where several steps in the direction of protecting climate refugees were indeed taken. One interesting example is the adoption of the Cartagena Declaration’s definition of the term ‘refugee’. This definition is wider than the 1951 Refugee Convention’s definition and indeed was used in Mexico for granting

protection to those fleeing natural disasters. But not all the authors in this book are optimistic. It is clear that the rise of populism and nationalism is having an impact. The case of Brazil – as reported by Diogo Andreola Serraglio, Fernanda de Salles Cavedon-Capdeville and Aline Burni – is telling, especially in light of this country’s withdrawal from the Global Compact on Migration.

INTW.: This is very informative, even if, to be honest, not really surprising. It fits well within the wider picture of migration – those that are interested in addressing problems will act, and those who are not, will not. Those who were born in the right place will probably be ok, and those who were not, will not.

EDS.: Very insightful, thank you for this very deep observation.

INTW.: [Unsure whether the editors are being sarcastic or not].

EDS.: [Observing the interviewers’ uncomfortable expression]

No no, we are serious. And some of the authors have indeed commented on these injustices. In fact, Francesca Rosignoli frames the whole phenomenon of climate-induced migration as a case of environmental injustice. She points at those who will most likely have to migrate, and their consequent deprivation of their natural resources and cultural ecosystems. Rosignoli stresses that these communities are likely to be subjected to racial discrimination and significant barriers on migration, intensifying the injustice that is embedded in their situations. Elisa Fornalé makes a rather similar point, but from a different angle: she relies on the concept of the common concern of humankind, demanding enhanced international cooperation. So, as you can see, absolutely, questions of global justice (or injustice) are indeed framing the entire debate.

INTW.: And of course, these injustices are responsible for the weak legal framework that we currently have.

EDS.: Yes. Robert Oakes, Kees van der Geest, Cosmin Corendea, as well as other authors in this book,⁷ stress the impact that the dominant securitisation narrative is having on the international legal framework. These authors write – and we hope that you do not mind us quoting:

[t]hrough the securitisation prism, migrants are represented as ‘other’ and as such a threat to national security, cultures or purse strings. . . . Global agreements will inevitably take the form of the lowest common denominator as the most powerful states . . . A too common consequence is a watering down of elements expressly written to protect people and their rights.⁸

⁷ See, for example, Chapters 5 and 10 in this volume. ⁸ See Chapter 13 in this volume.

INTW.: So here we are back to square one – my claim that the Global Compacts are weak, and possibly unhelpful legal instruments.

EDS.: Yes, but as we also explained before – at great length – this is a very simplistic understanding of the Global Compacts’ role and –

INTW.: Yes, our time is running short, and there are other questions that I wanted to ask you.

EDS.: No no, this is important, please let us finish our –

INTW.: Ok, so I can see how your authors are covering the local and global approaches, but what about the critical approaches that is also part of the book’s title? So far, I am not hearing much about this.

EDS.: To be fair we have already mentioned Rossignoli’s and Fornalé’s chapters, which think in new ways about how wider principles in law and politics might be reframed for the benefit of climate refugees. But, also, Miriam Cullen has written a chapter that takes a sharp critical look at how the IOM operates, and in particular focussing on its lack of a normative accountability structure –

INTW.: Oh, your IOM contributors must be very happy about that!

EDS.: Yes, they are! Constructive criticism and analysis is always necessary, and surely any major organisation like the IOM should expect and even welcome that, which in this case they do. Anyway, readers can consider both Cullen’s arguments and also the chapter by Traore Chalzanoel and Ionesco and come to their own conclusions. Indeed, it is this kind of critical engagement that is intended to help ensure that whatever developments are taking place, are done so on sound principles, and in the interests of climate refugees themselves.

In our own chapter, we take a similarly critical approach to the decision in the Teitiota case, and indeed in the whole climate litigation strategy, not for the purpose of throwing darts at the Human Rights Committee or lawyers working in this area, but to help all of us to consider whether this is the correct strategy or not. Going back to your original question of ‘why this book, and why now?’ we think it is important always, but especially when a burst of activity and development is taking place in the law, as appears to be the case in this area at the moment, to stand back and consider whether we are heading in the right direction, using the most appropriate fora and strategies, or whether the right actors are leading it.

INTW.: Moving on ... so, ‘climate refugees’, still you persist with this term?

- EDS.: [loud sighs]
 INTW.: Yes. Surely you expected this one, didn't you? Especially when you know that most of your colleagues in this field have rejected it, including several contributors to this book!

Climate Refugees

- EDS.: Is there a chance that we will not need to defend this term, at least this once?
 INTW.: No. And be fair here, you did, once again, slap this term on the cover of your book, in scare quotes, if you please. It is only fair that you have something to say about it.
 EDS.: Oh well. Where should we start then? With 'climate' or 'refugees'? Which component of the definition 'climate refugees' should we defend first?
 INTW.: Let us begin with 'climate'.

Why 'Climate'?

- INTW.: So, why 'climate'? There are so many other, and I might add better alternatives, that capture much more accurately the multi-causality of this phenomenon. People migrate, sure, but it is never only about climate change. There is always a mix of social and economic reasons. And let us not forget the difficulties in even attributing certain problems – like storms, or flooding – to climate change. So, again, why 'climate'? Why not use broader terms like, for example, disasters, or, environmental?
 EDS.: So yes, we are aware that it is not always easy to distinguish between the causes for migration, and indeed this is the case with almost *all types of movements* – even when we are speaking about those migrating from war zones⁹ – there will almost always be a mixture of reasons for one's decision to move. Indeed, to make a standard claim for refugee status under the 1951 Refugee Convention does not require that the *only* reason for leaving your country of origin is persecution, just that it is *a* factor in

⁹ See Chapter 14 in this volume.

the decision to leave.¹⁰ We certainly do not ignore this fact, and we do not claim that every migrant should be automatically labelled as a ‘climate refugee’, even where climate change did have an impact on his or her native country. We also agree, that in the past, some, possibly, very eager academics, have wrongly attributed the title ‘climate refugees’ to certain communities that were not, in fact, majorly affected by climate change.

At the same time, we cannot ignore that, *in some cases*, the link between climate change and migration is in fact very clear. Think, for example, about the residents of Pacific Islands,¹¹ or certain coastal communities:¹² here, the science is already telling us that climate change is affecting elements like the availability of land, fresh water, food, or livelihood – all of which are affecting the habitability of certain areas.¹³ So science is already telling us that in *some* places, climate change is indeed a significant, and very much a direct cause for migration. In short, we need to let science lead the way, and – we certainly agree – we also need to be open to the possibility that the numbers and scenario described by many may have been exaggerated. We need to rely on case studies; on developments in attribution sciences, and also on the improved capabilities in assessing habitability,¹⁴ and as we understand these, at least in *some* cases, climate change is a leading – increasingly so – cause of migration. So while it is not accurate to label them all as ‘climate refugees’, it is equally inaccurate to say that this category of persons does not exist.

INTW.: A fair point, but I am not convinced that you really answered my question. Why do you insist on ‘climate’? Why not, for example, ‘environmental’ migrants – a category that can easily include climate change? Why should we distinguish between different types of

¹⁰ Para. 39, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (UNHCR, February 2019).

¹¹ Curt D. Storlazzi, Edwin P. L. Elias, and Paul Berkowitz, ‘Many Atolls may be Uninhabitable within Decades due to Climate Change’ (2015) 5 *Scientific Reports* www.nature.com/articles/srep14546.

¹² For example, research shows that the effect of salinity on crops is leading to migration in Bangladesh, J. Chen and V. Muller, ‘Coastal climate change, soil salinity and human migration in Bangladesh’ (2018) 8; www.nature.com/articles/s41558-018-0313-8 or the impact on non-coastal communities in Tristen Taylor and Delme Cupido, ‘Drought in the Northern Cape, South Africa: How Climate Change Changed a Small Town into a Permanent Refugee Camp’ in Ali Nubil Ahmad (ed.), *Climate Justice and Migration: Mobility, Development and Displacement in the Global South* (Heinrich Boll Stiftung 2021) 118.

¹³ See, for example, Virginie Duvet et al., ‘Risks to Future Atoll Habitability from Climate-Driven Environmental Changes’ (2021) *WIREs Climate Change*; Raphael Nawrotzki and Maryia Bakhtsiyarava, ‘International Climate Migration: Evidence for the Climate Inhibitor Mechanism and the Agricultural Pathway’ (2016) 23 (4) *Population Space and Place*; Chandan Kumar Jha et al., ‘Migration as Adaptation Strategy to Cope with Climate Change A Study of Farmers’ Migration in Rural India’ (2018) 10(1) *International Journal of Climate Change Strategies and Management* 121;

¹⁴ Duvet et al., *ibid.*

environmental migrants? Especially as – as we already agreed – it is not always easy to clearly distinguish climate change as a cause for migration. So instead of having to scratch our heads and think about what to call those who migrate due to, say, a drought (is it climate-related? Who knows?), let us just call it ‘environmental migration’ or even better, ‘disaster displacement’.

EDS.: This is a fair point – why ‘climate’ and not, say, ‘environmental’ migration? We are happy to address this question, but brace yourself, it will require a short monologue.

INTW.: I am an academic, I am used to monologues.

EDS.: Excellent. So, we believe that it is crucial that we do not hide, blur, delete, or dilute, the presence of climate change in this story. Climate change is a unique phenomenon, which is different from other disasters like volcano eruptions, or environmental problems like deforestation. It is different, due to the *combination* of two major aspects.

First, climate change is not a random event; it is caused by humans – by states and businesses – who benefited, and are benefitting, from emitting greenhouse gasses. There is an address here, at least in terms of liability and responsibility, and this address – this pointing finger – will disappear if we decide to take out the word ‘climate’. Terms like ‘disaster’ and ‘environmental’ are pointing nowhere – who shall we hold responsible for ‘disasters’? God, Mother Nature? These terms are entirely neutral, and in this regard, also unhelpful.

The second aspect that is important to mention here is the trans-boundary nature of this phenomenon. As different authors stress in this book,¹⁵ there is a strong injustice in the fact that those who are leaving their homes are overwhelmingly from countries that are least responsible for climate change, that is their carbon emissions, both today and historically are miniscule compared to others. In contrast, those states that are in the best position geo-politically, structurally, and financially to help those fleeing the effects of climate change are usually the ones that have contributed the most in terms of carbon emissions. Indeed, their power and resources have been built to a great extent on activities that have driven climate change over the past century or more.

The combination of these two factors is important. It allows us, as lawyers, to frame this issue in terms of international responsibilities

¹⁵ See, for example, Chapters 16 and 7 in this volume.