

General Assembly Study Guide: Dealing with the consequences of Climate Change

"How many lives do we want to lose, not just in the Philippines but in communities that have other climate impacts?"

Naderev Sano, leader of the Philippines delegation to the 19th UN climate change conference four days after Super Typhoon Haiyan struck his island nation.

I. General Assembly Overview

The General Assembly is one of the most prominent institutions of the United Nations. Since its establishment in 1945 under the Charter of the United Nations, the General Assembly occupies a central position as the chief deliberative, policymaking and representative organ of the United Nations. Comprising all 193 Members of the United Nations, it provides a unique forum for multilateral discussion of the full spectrum of international issues covered by the Charter.¹

The major function of the General Assembly is to observe the developments of global politics and "to make recommendations to promote international political cooperation, the development and codification of international law, the realization of human rights and fundamental freedoms, and international collaboration in the economic, social, humanitarian, cultural, educational and health fields."²

The main instrument of the General Assembly to fulfill this function is the resolution. Even though General Assembly resolutions are generally non-binding towards member states, a resolution as a written consensus of the international community is an important part of international "soft law". The importance derives from the fact that a General Assembly resolution can be understood as a statement about how countries "should" act.³

Currently, the General Assembly is in its 68th Session, which has started on 17 September 2013. The current President of the General Assembly is H.E. Mr. John W. Ashe from Antigua and Barbuda. He has been in the forefront of international efforts to address the adverse effects of climate change and the fight to eradicate poverty.⁴

¹ See <http://www.un.org/en/ga/about/background.shtml> (16.12.2013) for more details.

² See FN 1.

³ *William R. Slomanson*, *Fundamental Perspectives on International Law*, 2011, 36-37; *Kenneth W. Abbott and Duncan Snidal*, *Hard and Soft Law in International Governance*, 2000, available at <http://web.efzg.hr/dok/pra/hhorak/Hard%20and%20soft%20law%20in%20international%20governance.pdf> (16.12.2013).

⁴ <http://www.un.org/en/ga/president/68/about/index.shtml> (16.12.2013)



II. Topic Overview

According to the World Bank, a world in which average temperatures reach 4°C above pre-industrial levels would likely see unprecedented heat waves, severe drought, major flooding, and up to 1 meter of sea level rise.⁵ It does not require a lot of fantasy to imagine the severe consequences this would have in terms of agricultural and food security, as well as for the global economic development in general.

Scientists have begun warning about the drastic consequences of climate change in the late 1970s. The international community concerned itself with the issue about a decade later. In 1988, the World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP) established the Intergovernmental Panel on Climate Change, which should eventually be recognized with a Nobel Peace Prize.⁶ The member states of the UN signed an international environmental treaty to establish the Framework Convention on Climate Change (UNFCCC), which was negotiated at the UN Conference on Environment and Development (UNCED) in Rio de Janeiro from 3 to 14 June 1992. The objective of the treaty has been to "stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system." About five years later, in 1997, a protocol to this convention was signed to set binding obligations on industrialized countries to reduce emissions of greenhouse gases. This protocol is widely known as the "Kyoto Protocol".⁷

Since then, however, barely any progress has been made to establish efficient measures to control the causes of climate change. Contrarily, some major countries, such as Canada, have even withdrawn from the Kyoto protocol. The lowest point of this development was the 2009 United Nations Climate Change Conference in Copenhagen, where the international community failed to establish a legal framework to follow the Kyoto period.⁸

In the meantime, however, the consequences of climate change already became apparent. To name just a few examples: In 2005 Hurricane Katharina and in 2012 Hurricane Sandy caused catastrophic damages in Caribbean Countries, in particular in the United States, and just recently typhoon Haiyan cost 10,000 lives in the Philippines. In addition to these catastrophic events, there are also more subtle developments, such as desertification and sea level change. Scarce natural resources such as drinking water are likely to become even more limited. Many crops and some livestock are unlikely to survive in certain locations if conditions become too hot and dry, or too cold and wet. The issue of food security is an immediate concern in many parts of the world.

⁵ *Kenneth Strzepek and C. Adam Schlosser*, World Bank Discussion Paper - Climate Change Scenarios, http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/10/28/000334955_20101028051602/Rendered/PDF/575580NWP0Box31CCDP0109010Scenarios.pdf (16.12.2013).

⁶ See http://www.ipcc.ch/organization/organization_history.shtml (21.12.2013) for more details.

⁷ http://unfccc.int/kyoto_protocol/background/items/2879.php (21.12.2013).

⁸ <http://www.theguardian.com/environment/2009/dec/18/copenhagen-deal> (21.12.2013).



III. Points of Discussion

In the General Assembly of Heidelberg National MUN, focus should be set upon two major aspects regarding the consequences of climate change: First, the “loss and damage” compensation, and second, the issue of climate refugees.

A. “Loss and Damage” compensation

The latest Conference of the Parties (COP 19) to the UNFCCC was held in Warsaw, Poland, from 11 to 23 November 2013. The conference delegates continued the negotiations towards a global climate agreement, which for the first time incorporated a “Loss and Damage” mechanism instituting that richer countries help poorer countries suffering from the adverse effects of Climate Change. While this point at first almost caused the conference to fail, it was eventually agreed upon as the “Warsaw International Mechanism for Loss and Damage”. An important aspect to notice is that, for the first time in the history of the climate talks, also Least Developed Countries (LDC) participated in the implantation of this mechanism.

How did the idea for this mechanism come across? While the consequences of climate change incurred by poor countries - with citizens being forced to relocate, give up on their land, cultural identity and their right to human dignity - have been a crucial issue for quite some time, it was not until 2011 that the parties of the UNFCCC have started working on a compensation mechanism. The parties intention was to enhance the Convention as to the “*implementation of approaches to address loss and damage associated with the adverse effects of climate change, including impacts related to extreme weather events and slow onset events, taking into consideration experience at all levels.*”⁹ In less formal words, the parties decided to explore options for countries likely to suffer loss or damage from climate change to obtain some form of redress.

The question arising for the General Assembly from the plans of the UNFCCC is how this development can be implemented into the broader system of state liability. Generally, when a country suffers damage or a loss because of the actions of another state, that state is liable to the affected state. The General Assembly took note of the International Law Committee’s Articles on Responsibility of States for Internationally Wrongful Acts in 2001 (the “Articles”), which suggest legal instruments for the reparation of incurred losses.¹⁰ The main instrument described in these articles is restitution, which involves returning the situation to its original state as far as possible, and provided it does not involve a burden out of all proportion.¹¹ Even though these Articles have not been formed into binding international law until today, the General Assembly has continuously commented them, and they have been very widely approved and applied in practice, including by the International Court of Justice.¹²

As the Articles impose a system of state liability for wrongful international acts, commentators have started arguing that a country’s pollution can constitute such a wrongful

⁹ http://unfccc.int/adaptation/workstreams/loss_and_damage/items/7545.php (16.12.2013).

¹⁰ http://legal.un.org/avl/pdf/ha/rsiwa/rsiwa_e.pdf (16.12.2013).

¹¹ http://www.field.org.uk/sites/field.org.uk/files/papers/field_loss_damage_legal_strategies_oct_12.pdf

¹² <http://legal.un.org/avl/ha/rsiwa/rsiwa.html> (16.12.2013).



international act as it accelerates climate change. Thus, the Heidelberg National MUN General Assembly should consider if there is need a more elaborate system of state liability for pollution taking into account the following points:

- Are certain countries more responsible for climate change than others?
- Should states be financially liable if they cause climate change with adverse effect towards other countries?
- What types of “loss and damages” resulting from climate change should countries be liable for? Can there be a definition of the term?

B. Climate Refugees

Scientists have been warning for several years that the serious impacts of climate change could force millions of people to leave their homes. Yet the existing framework of the UN system is not sufficiently equipped to deal with this upcoming crisis.¹³ Just recently, in November 2013, a legal case in New Zealand captured world media attention. Ioane Teitiota faced deportation to his home in Kiribati. He had claimed refugee status resulting from the impact of climate change, sea level rise, and extreme weather on his small island nation which some have predicted will be inundated within decades, forcing the entire national population - some 50,000 people - now inhabiting a narrow island of just six square miles, to seek a new homeland. The court dismissed his claimed arguing that Mr. Teitiota did not meet the “fear of persecution” criterion the United Nations Refugee Convention requires.¹⁴

The United Nations Refugee Convention has been adopted in 1951 in the aftermath of the Second World War.¹⁵ The historical background explains the original function of the Convention: to provide protection for refugees that have to leave their home because of the effects of war. However, the international community also recognized that there are more factors than the effects of war that can force people to leave their home in order to seek protection in another country. Thus, the general “fear of persecution” criterion was established. That means that countries that have ratified the Refugee Convention have to provide protection to persons who have left their home country as the political circumstances threatened their personal safety. One has to realize that the Convention was drafted when the international community had the situation of Jews seeking protection in other country to escape from the Holocaust in their minds.¹⁶

But can the international community just go ahead and address the issue of climate refugees by merely changing the wording of the Refugee Convention? The UNHCR rejects the term climate “refugee” because of narrow legal definitions in the post-1945 system. In their view, the term “refugee” should remain limited to an individual recognized under the

¹³ <http://www.environmentmagazine.org/Archives/Back%20Issues/November-December%202008/Biermann-Boas-full.html> (16.12.2013).

¹⁴ http://www.huffingtonpost.com/peter-neill/a-climate-change-refugee_b_4414234.html (16.12.2013).

¹⁵ General Assembly of the United Nations, 1951 Convention Relating to the Status of Refugees, Geneva, Switzerland, 25 July 1951, Article I; see <http://www.unhcr.org/pages/49c3646cbc.html> (20.12.2013) for more details.

¹⁶ Naomi S. Stern, *Evian's Legacy: The Holocaust, the United Nations Refugee Convention, and post-war refugee legislation in the United States*, 2004.



1951 Convention Relating to the Status of Refugees: “a person who is outside his or her country of nationality or habitual residence” and cannot rely on the protection of his or her home state for fear of persecution. As an alternative, they prefer the notion of “environmentally displaced persons,” which carries with it less responsibility on the part of the international community. Critics argue, however, that the UNHCR’s traditional narrow definition does not seem very effective. They ask why the international framework for the protection of people who have lost their homes due to climate change should bestow a different status and a different term, than those who have lost their homes due to political prosecution.¹⁷

With these aspects as background, the delegates of the Heidelberg National MUN General Assembly should address the following points:

- How can the international refugee system be adopted to provide protection for people losing their homes due to climate change?
- How can a “climate refugee” be defined? Is this even an appropriate term?
- What obligations should states have towards such climate refugees?
- How can such a new framework be implemented into the UN system with its wide range of institution?

¹⁷ <http://www.environmentmagazine.org/Archives/Back%20Issues/November-December%202008/Biermann-Boas-full.html> .



IV. Further Resesearch

A. Legal Documents

- The Warsaw international mechanism for loss and damage associated with climate change impacts
https://unfccc.int/files/meetings/warsaw_nov_2013/decisions/application/pdf/cop19_lossanddamage.pdf (21.12.2013)
- The 1951 UN Refugee Convention
<http://www.unhcr.org/3b66c2aa10.html> (21.12.2013)

B. Articles

- *Spiegel Online*, Climate Progress: Warsaw's Meaningful Compromise, 27.11.2013 ,
<http://www.spiegel.de/international/world/warsaw-mechanism-a-move-forward-in-climate-change-debate-a-935931.html> (21.12.2013)
- *Judith Curry*, Climate Etc. Blog, Press Overview for the Warsaw Conference, 24.11.2013,
<http://judithcurry.com/2013/11/24/warsaw-loss-and-damage-mechanism-a-climate-for-corruption/> (21.12.2013)
- *Frank Biermann/Ingrid Boas*, Protecting Climate Refugees: The Case for a Global Protocol,
<http://www.environmentmagazine.org/Archives/Back%20Issues/November-December%202008/Biermann-Boas-full.html> (21.12.2013)
- *World Council of Churches*, “Climate Refugees” – Documentation,
http://www.brot-fuer-die-welt.de/fileadmin/mediapool/2_Downloads/Fachinformationen/Dialog/Dialog_12_Climate_Refugees.pdf (21.12.2013)