Territorial Rights and Their Limits: The Case of Environmental Refugees

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Very early draft. Please, don't quote.

1. The Problem: Environmental Refugees and Territorial Rights[1]

Current estimates indicate that by the end of this century the global sea level will rise somewhere between 28 and 43 centimeters as a result of thermal expansion and the melting of glaciers and ice caps (see IPCC 2007: 409). Moreover, this rate is not uniform; regional variances can be experienced, with small island states (such as the Polynesian archipelago Tuvalu) likely to suffer disproportionate consequences especially in terms of land loss (see IPCC 2007: 413-14, Gillespie 2003-4). Also countries with low-lying coastal areas are under this threat. According to the European Environment Agency, more than thirteen million people across European countries could be affected due to flooding as a result of one meter rise in sea level. Especially vulnerable are coastal regions in the Netherlads, Belgium, Germany, Romania, Poland, and Denmark (see EEA 2006: 22-23). The situation is even worse in regions of high population density, such as South Asia. The IPCC official calculations indicate that a rise in sea levels of 45 centimeters would displace 5.5 million people and submerge over 10 percent of Bangladesh, with increased levels of migration (see IPCC 2001: 569). Some regions have been hit by violent climate-induced disasters, such as devastating floods and typhoons. During the 1995 Berlin conference on climate change, so Atiq Rahman, of the Bangladesh Centre for Advanced Study, warned the audience: «If climate change makes our country uninhabitable, we will march with our wet feet into your living rooms» (Athanasiou and Baer 2002: 23).

Many theorists claim that people forcefully displaced by submersion and violent floods should be regarded as refugees of a new kind, to be called "environmental refugees", and that they are entitled to asylum in other countries (see Bell 2004: 135-6, El-Hinnawi 1985, Myers 1995, Cooper 1998). Moreover, it has been recently suggested that granting admittance to environmental refugees entails a principled limitation of the territorial rights of states, namely a justified relaxation of states' exclusive territorial jurisdiction, but not a complete loss of their original territorial rights. Cara Nine puts forward this claim in the following passage:

> Assume that the people of these nations [i.e. nations disappeared as a result of rising sea levels] have a right to self-determination and that this requires territorial rights. But where should they claim territory? There is no unclaimed land, and so some state(s) will have to yield some of their own territorial rights to make room for the new states. [...] Suppose that [...] state A must allow ecological refugee state B access to state A's territory. This does not necessarily imply that state A must give up all of its territorial rights in that region to state B. The states may settle on a nested territorial arrangement somewhat like Native American reservations in

[1] I wish to thank Michele Bocchiola, Mirko Garasic, Lorenzo Greco, Eszter Kollar, Domenico Melidoro, Raffaele Marchetti for their questions and suggestions on a previous version of this paper. Usual *caveats* hold.

the United States, or similar sort of partnered or nested territorial arrangements (Nine 2008: 163-4).

A background assumption of this view seems to be the notion that there are two distinctive rights here, a right to a territory of individuals or of groups of individuals and the right to territorial sovereignty of states, and that they are not in opposition (see Nine 2008b).

The main purpose of this paper is to assess the plausibility of the two claims above. This article has two parts. First, I will put forward an argument in favour of the claim that people whose displacement is caused by the above mentioned climate-induced events could be properly defined "refugees", in conformity with the official definition given by the 1951 Geneva Convention relating to the Status of Refugees, and treated according to the established legal provisions concerning admittance of political refugees. The argument in support of this claim will be based on the idea that refugees have a specific right to a territory, understood as the right to a settled placement within a given territory[2].

Second, I will argue that environmental refugees and their right to a territory call in question the right to a territory *of states*, understood as the right that states have to hold exclusive jurisdiction within their territory. This claim will be supported through two arguments: *the over-population argument*, to the effect that admittance of environmental refugees might deprive admitting states of the control of their population size, and therefore of a necessary element of exclusive jurisdiction; the *outside interference argument*, according to which environmental refugees and the ensuing loss of exclusive jurisdiction are due to outside collective choices constraining the autonomy of admitting states.

Some points are worthy to be emphasized at the outset. First, in claiming that environmental refugees are included in the official definition, I am not starting a slippery slope process through which any distinction between ordinary migrants and refugees is wiped out. Environmental refugees can be distinguished from both plain immigrants and from the so-called "environmental migrants" (see Hugo 1996) - or at least so I will argue. Second, I am not advocating a generalized enlargement of the official definition of "a refugee" given in the 1951 Convention. Indeed, I think that an argument to the effect that this definition accounts also for environmental refugee

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[2] Here, I will mention rights in conformity to the usage of this term in current legal and political discussions, rather than as it appears in philosophical debates. In other words, I am not endorsing any strong notion of rights, nor any deontological vision of morality. I am only assuming that there are people entitled to a given treatment, in force of the joint support of moral arguments - such as the ones discussed in the next section - and legal documents - such as the 1948 Universal Declaration of Human Rights. In particular, I will not assume that rights are to be considered primitive or not derivative, and the same holds for basic freedoms. Rather, I tend to consider them as claims to different entailments, to be justified by reference to more basic values, whose achievement is made possible by establishing certain rights (see Griffin 2008); but this view will not be discussed here. Nor I endorse the notion that rights should ever be respected, no matter the costs of this respect. I simply assume that respect for a core set of *basic* human rights - namely, life, property and fair treatment under the rule of law - and freedoms - to wit, freedom of action, association, movement, thought and speech - is *ceteris paribus* worthy of being pursued (on the notion of "basic rights", see Shue 1980; notice that here I am endorsing Shue's notion, but not his substantive list of basic rights). The only function I give to right protection is to provide us with a sufficient justification of state's typical functioning. In particular, I submit that state coercion could be justified only in terms of its function in preventing violations of human rights and undue restrictions of basic freedoms. This view, also, will be posited without a full discussion.

neither entails nor is the premise of an argument aimed to regard as refugees people who suffer persecution not only from state authorities, but also from non-state agencies, from which the state is unable to protect them (as Dummett 2001: 52 argues). Environmental refugees, at least as here defined, are such on firmer grounds than people starving or persecuted by terrorists or other non-state agencies; they are to be recognized as refugees on the same grounds invoked for ordinary political refugees. Fourth, a side-effect, and a further aim, of this paper is to tell apart two kinds of rights to a territory, a right of individuals and a right of states, and to articulate a conception of them as normative consequences not of antecedent individual rights to property (as in Simmons 2001, Steiner 1996, 2008) or to land (as in Nine 2008), but as a contingent entailment of a claim about the conditions for a legitimate state coercion. In other words, in the following pages I will assume that state coercion is legitimate insofar as it is a necessary means to protect human rights and basic freedom of citizens, and that a right to a territory both for citizens and for the state is a necessary condition of such a protection.

2. Environmental Refugees as a Legal Category

2.1. The 1951 Definition and its Normative Grounds

The definition of "a refugee" given in the 1951 Convention establishes that

> the term 'refugee' shall apply to any person who [...] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (art. 1A).

Against the claim that people fleeing from submerged areas are could be included in this official definition, the following objection is currently raised: Environmental factors of displacement are not covered in the official definition above mentioned. Hence, those groups of migrants are not properly refugees; at most, they can be defined environmental migrants. Use of the term "refugee" for this kind of displaced people is inappropriate. Therefore, any claim to the effect that those migrants should be admitted on the same legal grounds appealed to when political refugees are

considered is devoid of legal validity. Let's call this the *definitional challenge* (see Williams 2008: 508-9)[3].

My purpose in this section is to argue that, according to its best interpretation, the import of this official definition can properly include in it environmental refugees. The strategy I will employ goes through two steps. First, I will spell out the best interpretation of the normative assumptions backing the official definition when applied to ordinary political refugees. Then, I will show that the same arguments supporting admittance for ordinary political refugees could be invoked to claim that people fleeing from climate-induced disasters are entitled to admittance as well. Consequently, the official definition includes also environmental refugees.

The normative underpinnings for the 1951 definition of the status of a refugee could be expounded in at least three different ways. First, it could be argued that this definition attracts our attention to the violation of human rights connected to, and ensuing from, political persecutions. Plainly, any individual on earth has a duty to respect human rights, and to repair for their violation, if she can. Then, it seems that states are specially required to do their best efforts in protecting and respecting human rights, just because they have greater possibilities in doing this than any individual could possibly have. In this respect, asylum is the response that states are required to give to violations of human rights. Let's call this the *human rights interpretation of the refugees Convention*.

This interpretation faces the following objection. According to this view, any violation of human rights, or at least any violation ensuing from, or connected to, political persecutions might provide the ground for a request of asylum. This would make any political persecution on individuals, no matter whether performed by states or non-state agencies, or even by specific individuals, a reason to grant asylum to the victims. However, the claim that any violation of human rights, no matter the author of it, should be faced by admittance of its victims to another state is plainly overstated. It seems more plausible to claim that violations of human rights committed by

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[3] Supporters of the claim that environmental refugees constitute a distinctive legal category might face also further objections. Most discussed are the following ones. A *pragmatical objection*, to the effect that any inflationary extension of the legal treatment due to political refugees to large masses of people could heighten states' resistance to admittance. As a consequence, both environmental-caused migrants and ordinary refugees could see their predicament made worse. Putting in question, or trying to re-negotiate, the 1951 Convention itself may be a dangerous move, since many states view even that minimal platform as prescribing terms too generous, and could exploit re-negotiations to narrow down it, or to repeal it at all (see Dummett 2001: 52. Keane 2004: 214-17).

A *skeptical objection* could be phrased as follows. According to the best theories of it, migration has complex and plural causes, generally distinguished in three sorts (see Kritz et al. 1992): the so-called "push" factors (socioeconomic and political features of the country of origin, such as poverty, high unemployment rates, population growth and political persecutions and conflicts); the "pull" factors (socioeconomic and political features of the target countries, such as high employment rates, higher living standards and permissive entry policies); structural elements (socioeconomic features of individual migrants, such as education, availability of money for long journeys, or socioeconomic characteristics of the global markets and the richer states, and so on). No conclusive arguments have been made to the effect that climate-induced events could be a further, and specific, kind of cause, able to lead to migration independently of the other - more typical - factors (see McGregor 1993, Kibreab 1997, Black 1998). At most, climate-induced events are merely intensifiers, or enablers, of these usual drivers of migration. Therefore, there are neither environmental refugees, nor environmental migrants. There are only migrants and refugees of the more familiar kinds, who can come from countries experiencing environmental disasters, but have been driven to migration by the ordinary causes. In the main text, I will not consider those objections. I will focus only on the definitional challenge.

individuals and groups should be prevented and repaired by the state that holds a legitimate and exclusive jurisdiction over the territory in which these violations occurred. Indeed, it might be argued that the main ground of legitimacy for states is exactly their role in protecting human rights of their citizens, and repairing violations of them. Accordingly, the victims of those violations might have no entitlement to seek asylum or to flee their territory; on the contrary, they should ask their own states for protection, and not foreign states or the international community at large. Therefore, it seems that the human rights interpretation fails to account for the holders of the duty specified in the 1951 Convention - i.e. the international community of states.

A better view might be the following. Refugees are not fleeing simply as a consequence of violations of their human rights; rather, they are to be seen as the fleeing victims of a violation perpetrated by their own state. In particular, it might be argued that state's coercive powers are not warranted or legitimate non-derivatively, but only instrumentally, namely only to the extent that their exercise ensures protection and respect of human rights. Hence, insofar as a state violates the human rights of its citizens, it loses its legitimacy and the victims of its persecution are entitled to look for the necessary state protection elsewhere. Consequently, any legitimate state has the duty to protect not only its citizens, but also any stateless individual.

This view of state legitimacy might have a further consequence. Not only states have a legitimate role only to the extent that they ensure protection and respect of human rights, but also their territorial integrity is instrumental to that purpose. In other words, closed political communities, and their mutual isolation through regulated borders, are warranted only since, as a matter of fact, by dividing up this way the territory of the world the maximal respect of individual human rights is ensured. (If, in fact, it turns out that a cosmopolitan institutional framework would be the best way to protect individual human rights, then, according to this view, states would lose their legitimacy.[4]) Consequently, any state to which the victims of state violations of human rights address their requests of protection is obliged to protect them, *ceteris paribus*. Admittance and asylum, in this respect, constitute a sign of the protection that admitting states are prepared to bestow on refugees. Let's call this the *state protection interpretation of the refugees Convention*.

This instrumental account of the legitimacy of national states, framed in terms of human rights, is different from more well-known views of a similar kind. Some theorists argue that independent states are necessary to have a properly functioning democracy, while others maintain that separated states are needed in order to realize at best distributive justice. Those views could be challenged, mainly because they are based on weak empirical generalizations. There are no strong arguments against the possibility that democracy and distributive justice are better realized at a supra-state level (see Buchanan 2003: 251-2).

The minimalist view here proposed rests on stronger empirical evidences. Protection of human rights and basic freedoms is a matter mainly of adjudicating and enforcing law. It seems apparent enough that control over territory is required to this purpose, and it seems evident enough that such a control could be more difficult for a

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[4] Consequently, cosmopolitanism - at least understood as the idea that governance should be given to a unique institutional structure, having a global scope - turns on empirical arguments, more than on normative ones. The normative contrast is between supporters of the inherent or primitive value of states and theorists granting to states only an instrumental value.

supra-nationally, or even a globally centralized administration, than for smaller, and less centralized, structures. Clearly enough, this argument might be used even within states, to claim that also a centralized, big state is unfit to a territorially pervasive defense of human rights. However, this objection could be taken as an argument against centralization and big states, not against states of medium size and with a good deal of subsidiarity. Be this as it may, what matters to the present purpose is that the role of states in protecting against violations of human rights seems empirically grounded, at least given the many failures of supra-national attempts to prevent those violations in many parts of the world.

Against the state protection interpretation of the refugees Convention, the following objection might be raised. Strictly considered, state violations of human rights do not require admittance and asylum. Rather, they are the ground to carry out humanitarian interventions, or (in some cases) to wage a just war. Insofar as the victims of state violations of human rights flee in large groups from their territory, of course, admittance and asylum could be considered required responses. However, as a matter of fact, flight and displacement are strategies open only to few of the victims of gross state violations of human rights. In many cases, the bulk of the victims is forced to stand in their territory, not being able to move. Accordingly, the relevant response to these cases should be active intervention, rather than a passive behaviour constituted of mere admittance of the few asylum-seekers coming from places where large violations of human rights are perpetrated by states. Admittance of refugees cannot be substituted for active humanitarian intervention.

To overcome this objection, an alternative argument might be proposed in support of the official 1951 definition. Refugees are not simply the victims of generic violations of human rights. Rather, a specific right is denied to them. This is *the right to a territory*. Refugees are stateless people in two senses. For one thing, they are not longer protected by their states; second, in order to escape political persecutions, they cannot help abandoning a given territory - typically, their birth-place, or the territory where they have settled their living. Now, it can be shown that it is a violation of *this specific* right that leads to a right to admittance and asylum. To this purpose, I employ

the following line of reasoning (borrowed from Dummett 2001: 28, with some modifications[5]).

a. *Citizenship* Every individual is entitled to live in the country of her citizenship[6], at least because this is a necessary condition to enjoy state protection (and providing this protection is the only justification of the existence of states, as claimed above). As a consequence, no state may lawfully banish or expel its own citizens. Indeed, possession and enjoyment of this right to live in one's country is one of the marks of citizenship;

b. *Right to a territory* If every individual has the right to live in the country of her citizenship, then a fortiori she has the right to live *somewhere.* To put it otherwise, if every person has the right to be protected by her state, she has the right to be protected by a state, whatever it is. If settlement in a territory is a necessary condition for state protection, then the right to live somewhere is a necessary condition to enjoy state protection;

c. *Right to admittance* If it is unjust for a state to deny its citizens the right to live in its territory, then it is unjust for any state to deny individuals the more general right to a territory. Arguably, people who are denied their right to live in the country of their citizenship are not longer within the jurisdiction of their own state; indeed, even if only in a figurative sense, their state is not longer existing, at least not as a responsible, or legitimate state. Accordingly, the other legitimate states have the duty to take in both stateless people and people unjustly expelled from their country of citizenship;

d. *Right to admittance for refugees* States could expel their citizens also by persecuting them, i.e. by making expatriation the only viable option to save one's life

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[5] The main alterations I made to the original reasoning presented in Dummett 2001 are the following. First, contrary to Dummett, I think that the right to a territory, and the right to live in the country of one's own citizenship, are not primitive ones. Rather, they derive from more basic human rights (mainly, rights to life, property and fair treatment under the rule of law), and from the function of states in protecting them. As explained in **a**. and **b**. below, to live in a territory seems to be a necessary condition to have one's own basic human rights protected. This connection between a settled territory and enjoyment of basic human rights should be apparent enough. After all, even the narrowest list of human rights - such as one including only life, property and fair treatment under the rule of law -, as well as the shortest list of basic liberties - such as one including only freedom of movement, thought and speech - could hardly be enjoyed by someone forced to continual displacement. (A fortiori, this holds for social and cultural rights.) This is not to say that basic human rights and freedoms are foreclosed to nomadic or wandering people. The point is, rather, that forced displacement hinders state protection of human rights and freedoms. A stateless person could have her human rights and basic freedoms respected by chance. The issue here is that state protection seems to be necessary to ensure respect of human rights and basic freedoms also in unlucky and problematic situations. Furthermore, the right to a territory is weaker than an original right of ownership of land. I am not endorsing the idea of a common ownership of earth (defended for instance in Blake and Risse forthcoming). Settlement on a territory is a derivative right, which acquires its status and force in virtue of an empirical connection between enjoyment of state protection of human rights and security from forced and continual displacement. Ownership of land and resources is not what matters here. Settled living, and security in the prospect of being able to settle in a given place, are the relevant things.

In addition, Dummett maintains that his line of reasoning provides a ground to claims for asylum not recognized by the 1951 Convention (see Dummett 2001: 28). By contrast, I think that the text of the Convention, with its focus on political persecution, should be interpreted, and provided with a normative underpinning, and that Dummett's argument, if modified as I propose, could provide the best foundation to the official definition of refugees, without any improper enlargement.

[6] This entitlement is acknowledged by the 1948 Universal Declaration (see art. 13).

and goods. Accordingly, expatriating victims of state political persecutions are entitled to admittance and asylum in other states.

Let's call this interpretation of the normative foundations of the 1951 Convention, the *right to a territory interpretation*. It has many virtues. For one thing, it is able to account for the specific entitlement given to refugees in the 1951 Convention, i.e. their right to have a territory to live in. Second, through this interpretation, the right to a territory can be easily connected with the foundation of state legitimacy – namely, protection of human rights. However, this connection does not make right to asylum and duties of admittance collapse into duties of humanitarian intervention or international active rescue (as in the state protection interpretation). In other words, the right to a territory interpretation keeps the meaningful normative elements of the state protection interpretation, but, unlike the latter, it is able to fit the precise duties and rights established in the 1951 Convention.

Moreover, this account provides us with an easy route to distinguish ordinary migrants from refugees, as well as with a barrier to any inappropriate extension of the category of refugees. The right to a territory interpretation entails that migrants could be labeled as refugees only if two conditions are met. First, they cannot help expatriating; second, they are in this predicament because of state action or of lack of state protection. In other words, refugees are not ordinary migrants, in that the latter, even in the worst situations, have other (even if not necessarily better) options. Ordinary causes of migration are not necessary drivers of it, for many people do not migrate even in scenarios where the most commonly acknowledged causes of migration are present. By contrast, for refugees expatriation constitutes the only viable option to secure their rights and freedoms. In addition, even when migration constitutes a compelling option, this could be the case also when the state made its best efforts to protect its citizens, as it might be the case when acute and sudden economic crises obtain. Possibly, in those cases also migrants could invoke admittance or international protection; however, their protection either stand on different grounds than in the refugees case or is more limited and contextual. Perhaps, the large masses of people fleeing Argentina during the recent economic crisis could have asked for a special treatment, and for some enlarged quotas of admittance rights, as compared to other migrants. This special treatment could be warranted by the magnitude and human costs of the crisis. However, their situation is blatantly different from the refugee status.

Hence, the claim that refugees are entitled to free admittance does not amount to claiming that migrants of any kind should be freely admitted. It might be the case that both claims are true, and yet arguing in favour of admittance of refugees (at least if the 1951 Convention is interpreted as here proposed) does not amount to arguing in favour of open borders. Even though it could be argued that migrations due to serious catastrophes such as sudden economic crises also require admittance, this claim cannot be supported by appealing to the 1951 Convention, or to the right to a territory interpretation of it.

Importantly, the above account of refugees status could suggest two general methodological points. First, typical discussions about migrations have assumed a sharp distinction between refugees and migrants (see Seglow 2005: 318). This distinction, far from being clear by default, should be defended through normative arguments. The right to a territory interpretation is one of these arguments. My

contention here is that it provides the best argument to establish a sound distinction between refugees and migrants.

Second, usually migrants are identified with economic migrants - i.e. people expatriating for socioeconomic reasons mainly. Moreover, the question whether migrants should be freely admitted or not is discussed as a perfectly general issue, a question not changed in its terms depending on the different kinds of migrants considered. However, it might be argued that economic migration is only one among many kinds of migrations. For instance, arguably migrants could be driven by dramatic events such as sudden and acute economic crises, or abrupt and violent environmental events, even though their state made its best efforts to protect them, and therefore they might not be taken as proper refugees. Likewise, climate-induced events, and other environmental changes, such as increased pollution or altered rainfall rates, could act as triggers of the usual factors of economic migration. Therefore, a class of "environmental migrants" might be picked out. Now, any argument for or against admittance of ordinary economic migrants might be unfit to those different species of migrants. Possibly, a more lenient admittance policy might be advocated both for people fleeing from sudden and acute economic crises and for the victims of climate-induced environmental changes. However, it might be claimed that the fate of those groups does not elicit that sense of moral urgency we feel toward refugees (a sense of urgency that the right to a territory interpretation is aimed to account for). These remarks show that a piecemeal approach to migration issues is more plausible than general theories.

2.2. Right to a Territory and Environmental Refugees

The right to a territory interpretation of the 1951 Convention could be employed to show why people displaced in consequence of a complete submersion of their place of living could be properly considered refugees, and should be treated accordingly. In those cases the distinguishing marks of the refugee status occur. Indeed, those circumstances provide a particularly sharp instance of a state violation of the right to a territory.

People living in coastal areas submerged as a consequence of climate-induced catastrophic events, if not moved in other parts of their country with the help of their state, if not helped by it in other ways, and if not able to move on their own, cannot help expatriating. Besides, the catastrophic events of submergence and flood typically cause the destruction of their material goods, and often put at risk their life and health. In addition, those kinds of event could be forecasted, with a sufficient reliability - contrary to other sudden and catastrophic climate-induced events. Accordingly, taking provisions for these outcomes is plausibly part of the state protective duties, like taking provisions against political persecutions, or abstaining from committing them. Hence, both their basic human rights and their freedoms are threatened. Moreover, the state protection they deserve is lacking, since their state is at fault in failing to take adequate provisions to prevent the catastrophe, or at least it failed in doing its best efforts to do it. It seems plain enough that those people are entitled to admittance and asylum in other states, on grounds which are strictly analogous to those invoked in the case of ordinary political refugees.

However, environmental refugees display distinctive features. Ordinary political refugees lose their right to a territory because their permanence in their place of living has been made extremely difficult and dangerous by political persecution, or

by a lacking state protection. As previously explained, refugees cannot stand in the country of their citizenship since permanence there is too risky for them. In other words, threats to their human rights and basic freedoms force them to give up their right to live in their country. They lose their right to a territory as a consequence of having lost their more basic human rights and freedoms.

By contrast, environmental refugees lose their right to a territory in a more straightforward and literal way. They lose their territory, which is literally destroyed by a catastrophe. Accordingly, the violation of their human rights is not the cause of the violation of their right to a territory, but rather the consequence of it. The destructive impact of climate on their territory, and the negligent behaviour of their state, rob them of the territory they were entitled to.

From this difference a normative difference issues. Ordinary political refugees could claim not only a right to admittance and asylum, but also a right to return home, when a state protection of their human rights and basic freedoms will be able again to be assured there. Consequently, it might be argued that refugees have only a temporary right to asylum, whereas their strongest claim is to return their country. This makes clear that asylum falls short of full, and permanent, citizenship. Moreover, admittance of refugees is different from admittance of migrants in another respect. It seems that proper refugees should be freely admitted, but that their admission is conditional and temporary, being dependent on the possible restoration of their right to live in the country of their citizenship. By contrast, while admittance conditions for migrants could be less lenient and more piecemeal than those for refugees, it would seem odd to admit economic migrants only temporarily. After all, the bad economic conditions they are escaping are likely to be permanent, or at least relevantly long-lasting. Moreover, if migrants are admitted in virtue of a concern for freedom of movement, any temporal limitation would seem an arbitrary limitation on their liberty.

Environmental refugees are different. There is no territory for them to come back into. Accordingly, they could claim *a new territory* and permanent citizenship in it. This move is not puzzling, at least according to the right to a territory interpretation of the 1951 Convention; indeed, it is a straightforward entailment of this interpretation. However, the claims made by environmental refugees could have puzzling consequences with respect to *territorial rights of states*, as we will see in the next section.

3. Territorial Rights of States and Environmental Refugees

3.1. Territorial Rights of States

In the above section, two main claims have been made. First, states owe their legitimacy to their function in protecting citizens from blatant violations of their human rights and encroachments of their basic freedoms. Second, to enjoy state protection, settlement in a given territory is needed. Therefore, citizens have a right to a territory. As previously said, this right is a derivative entitlement, to the extent that it acquires its point from its being a contingently necessary condition for the enjoyment of more basic human rights. Moreover, in the framework here defended, this right is not connected either to a right to land or to a right to resources. Even though basic human rights such as life and property might be necessarily connected with exclusive

possession and usage of a given set of resources, and of a given portion of land[7], the right to a territory needed to enjoy state protection is a further right, of a distinctive kind. It is the right to a settled placement in a territory, which does not entail necessarily possession of it, or of the resources in it contained.

However, from the above view of state legitimacy a further kind of right to a territory might be drawn. It might be argued that state protection of citizens' human rights and freedoms might be achieved only insofar as the state exercises an exclusive jurisdiction within a given closed territory. Exclusive jurisdiction in a territory might in its turn be understood as the right to exercise coercive powers to make, adjudicate and enforce legal provisions within that territory, without interference from outside forces (cp. Nine 2008a: 149, 163). It seems, in particular, that to have a closed community and a bounded territory is an obvious requirement to be free of interference from outside forces, and therefore territorial determined borders, and a control on them, are necessary elements of exclusive jurisdiction. After all, national self-determination, and national control on the internal social and political life, could be shown to be necessary means to exercise individual freedoms and to enjoy basic human rights for the citizens of any state. This right to exclusive territorial jurisdiction might be labeled, for short, *the territorial right* of the state in question. As in the individual case, this right is a contingently necessary consequence of state protection of human rights and basic freedoms[8].

Then, we have two different rights here, connected to the same normative source, but with a different scope and nature. *Individual* territorial rights are rights to a settled establishment, rights to reside, within a given territory; by contrast, territorial rights *of states* are rights to exclusive jurisdiction within a territory (cp. Nine 2008b). Individuals gain their right to a territory since this right is a necessary condition for their enjoying state protection of their human rights and freedom. States gain their territorial rights since those are necessary conditions for their granting protection to their citizens, and the latter is a condition for their legitimacy.

Possibly, the conception here defended involves more a *duty* than *a right* to territory for states, thereby breaking the analogy between individuals and states. States have no right to territory, in the proper sense of the word. Rather they are requested to hold exclusive jurisdiction as a path to gain legitimacy. However, a different way of putting this claim is to maintain that a legitimate state is allowed to exercise exclusive jurisdiction in virtue of the fact that this is a necessary means to gain its legitimacy. Therefore, at least in this sense, a legitimate state has a right to territorial jurisdiction.

This could appear a relevant difference with respect to other conceptions of territorial rights of states. However, the view here presented suitably accounts for our intuition of territorial rights, i.e. the idea that states claim exclusive jurisdiction within a given territory. Simply, the view that I am advocating is that their claim is legitimate

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[7] However, this is not a completely uncontroversial view.

[8] Notice that such a jurisdiction should not necessarily be without limits. It is conceivable that the state jurisdiction is exclusive and not interfered in certain areas, but subject to external controls in others. For instance, in the European Community economic policies of states are in many areas controlled and implemented at the Community level. However, insofar as national states apply and enforce these decisions and regulations, and governments take part in the Community-level legislative and deliberative process, exclusive jurisdiction holds.

insofar as it is a necessary means to warrant the overall legitimacy of states, which derives from their protective functions.

3.2. Refugees and the Limits of Territorial Rights of States

As previously said, territorial rights of states find their roots in the value of human rights and freedom. This value also sets their limits. The treatment of refugees is a clear case of this limiting action of the goal of human rights protection. Refugees have lost the state protection which is due to them, and this in its turn deprived them of the right to reside in their country. Then, this right of theirs should be restored, thereby assuring them of the needed state protection of their human rights and freedom. An action needed to do this, among others, is to grant them the right to reside in another country, at least until the conditions are reached for restoring their original right to reside in their country. Being a relaxation of the state control of borders, this constitute a relaxation of, and a limit on, the territorial rights of any state hosting refugees (cp. Nine 2008a: 159, 163). However, these relaxed territorial rights are not in opposition to the normative underpinning of the notion of a right to a territory, both for individuals and for states. Protection of human rights and freedom warrants both the two kinds of territorial rights we envisaged and their limits.

The treatment due to environmental refugees could be accounted for in this framework, too. Environmental refugees should be admitted, in order to have their right to a territory restored (see Nine 2008a: 163). However, as previously remarked (see above § 2.2.), environmental refugees cannot come back to their original territories, and therefore their admittance should be permanent, contrary to other kinds of refugees (in this respect, environmental refugees might be an intermediate case along a continuous line going from political refugees to ordinary migrants, see Williams 2008: 517-23). Due to this fact, the hosting states should limit their territorial rights, not only concerning their control on borders, but also with respect to the control and regulation of their population size. This could be viewed as a further relaxation of their territorial rights. However, this additional relaxation could be somewhat paradoxical.

3.3. Territorial rights and Environmental Refugees: A Dilemma

Admittance of environmental refugees has the main consequence of altering the population size of the receiving states, especially because their admittance should be permanent. Now, this seemingly neutral fact could seriously undermine the territorial rights of the admitting state. Beyond certain limits of population size, a state's capacity of efficient protection against possible violations of the human rights of its citizens could be impaired. Of course, to this threat natural responses could be subsidiarity and de-centralization. However, it might be argued that a threshold of population size exists beyond which even a de-centralized, imperial-like state loses its control of substantial parts of its territory. In this sort of cases, it seems unavoidable that the portion of territory where the extra-population lives gains its own jurisdictional autonomy. This event could obtain in two different forms. Either the new entity formed by the refugees actually secedes from the rest of the admitting state, or it establishes a federative framework, in which it has an exclusive jurisdiction on its territory, but exercises this jurisdiction within a joint structure with the rest of the original state. In both cases, the original state loses its territorial integrity, since it literally loses a part of its territorial jurisdiction. It seems, then, that the right to a territory of large masses of

refugees might well be in contrast with the territorial right of the target states. Let's call this the *over-population argument*[9].

Moreover, as already noticed, environmental refugees are a result of certain climate-induced disasters, such as submergence and floods of islands and low-lying coastal areas. Now, climate-induced events are the distant effect of long chains of drivers, whose responsibility is divided among thousands of agents in the world. In particular, current levels of emissions are due to the intertwined present and past conducts of millions of individuals on earth. In collectively bringing about events that are very likely to force certain groups of people to flee their countries, the rest of the world is in a sense collectively determining the options that the countries asked for admittance will face. Accordingly, those countries have their situation determined by outside interferences. Therefore, the sheer existence of environmental refugees seriously undermines their exclusive jurisdiction because it sets external constraints on it. Let's call this the *outside interference argument*.

It seems, then, that the target states of environmental asylum-seekers will face the following dilemma: Either environmental refugees should be denied admittance, or at least they should be denied admittance beyond a given threshold, or territorial rights of states should be declared void. This would make treatment to be reserved to environmental refugees strikingly different from the one given to traditional political refugees. This difference, however, apparently lacks a plausible foundation. Indeed, the same line of reasoning that seemingly supports territorial rights of states - i.e. the necessity of protecting people from state violations of human rights - could be invoked against any differentiation of this sort. Accordingly, either a new doctrine on refugees or a new account of the territorial rights of states should be provided.

3.4. Two Further Objections

Two objections could be raised against the line of reasoning employed in the above sections. I will finish this article by discussing them.

First, it could be argued that the main argument in favour of acknowledging environmental refugees as a distinct legal category is flawed by a well-known conflation of two different, and differently relevant, moral categories – namely, doing and allowing. Environmental refugees were presented as victims of a state failure in bestowing the necessary protection against certain climate-induced events that are the causes of the destruction of (a part of) the national territory. However, it might be suggested that state positive actions in violating human rights are plainly different, and more morally urgent, than possible inactions of states in preventing future or likely violations of human rights. This suggestion relies on the analogy with the well-known distinction between doing something and simply allowing that something occurs – for instance, between killing and letting die. It seems that ordinary political refugees, in being the victims of positive state persecutions, are in a morally more urgent condition than people whose suffering is merely the outcome of state carelessness.

To this objection the following answer could be given. In the sections above, the main premise was that the primary function of a state, on which its legitimacy relies, is

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[9] Obviously enough, this argument might also be used to advocate control on borders concerning admittance of ordinary migrants.

the protection of the human rights of its citizens. Protecting human rights amounts both to abstaining from positive violations and to preventing possible violations. Accordingly, when a state fails to prevent any violation of the human rights of its citizens, this act is a positive failure to perform its function, and not a mere allowing. The analogy with the difference between killing and letting die is imperfect, since it is not the case that states are merely obliged not to kill, as individuals are; rather they ought to prevent killings in their territory. Accordingly, to let someone be killed could be forgivable, or less urgent, for individuals, but not for states. Then, people forced to displacement in consequence of a state deliberately abstaining from the exercise of its protective functions are not different from people forced to expatriate because of state positive persecutions.

Notice that it is perfectly possible that a state, despite its best intentions and efforts, is not capable of preventing certain outcomes. This is very likely when environmental disasters are considered. The view here defended does not involve, however, that when this is the case, potential victims or displaced people should be considered refugees. Environmental refugees are the victims of natural disasters against which their state deliberately failed to act; when a state simply was unable to act, despite its intentions and efforts, its failure does not create refugees.

Another objection could be leveled against the over-population argument presented in the § 3 above. It might be argued that admittance of refugees should be regulated according to a principled pattern, and that the existence of a regulated pattern prevents any possibility of over-population of a single state. For instance, it might be suggested that a country should admit environmental refugees in proportion to its past, or present, responsibilities for climate change.

To this suggestion, the following answer could be given. It cannot be taken for granted that the amount of refugees a given country should admit, in proportion to its responsibilities for climate change, is below the relevant threshold of over-population. Accordingly, any regulated pattern of admittance could be not enough to prevent over-population and the ensuing loss of territorial jurisdiction. Even under a regulated regime, there will be cases in which certain countries will be morally compelled to admit large masses of refugees, at expense of their territorial jurisdiction. The contrast between territorial rights of states and individual rights to a territory still holds.

4. Conclusions

In this paper, I tried to argue two claims. First, environmental refugees can be considered as a distinctive legal category, and to them the treatment is due that the 1951 Convention on the Status of Refugees dictates. Second, environmental refugees, being entitled to permanent residence in a territory, could restrict or undermine the territorial jurisdiction of the admitting states. Accordingly, in the case of environmental refugees territorial rights of individuals are in opposition to territorial rights of states. Hence, territorial rights of states needs a new account, or a new foundation.

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