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**Climate Refugees:
Investigating Gaps in International Law, Securitization, and The
Quest for Recognition**

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INTRODUCTION

Climate change is undeniably one of the most recurrent and pressing issues of the 21st century, impacting nearly every aspect of our life on Earth. Its far-reaching consequences are not only environmental but also economic, social, and political, making it one of the most urgent challenges for governments and international organizations. The increasing frequency and intensity of extreme weather events, rising global temperatures, and sea-level rise are placing climate change consistently high on the political agenda.

Climate change is a pressing issue at the global level, as it directly impacts and affects specific territories such as small island nations and low-lying coastal regions, which present some structural vulnerabilities as well as limited resources. At the same time, nations from all over the world, of different level of development, are not spared by the dangerous effects of climate change as well, as it was recently exemplified by the terrible floods in Northern Italy, as well as widespread wildfires in Canada, increasing tornadoes and storms in the US, etc.

One of the most significant human impacts of climate change is the potential for large-scale displacement and forced migration, which will represent a serious issue to deal with within the very close future (if not even right now, following the pace of the most recent environmental catastrophes). Environmental degradation could trigger different types of displacement, namely sudden-onset displacement, determined by disastrous extreme weather events which could destroy homes and infrastructure, forcing immediate evacuation and relocation; or it could be slow and gradual displacement, caused by the long-term impacts of climate change in the progressive deterioration of the natural environment

The intent of my research is to assess how the phenomenon of climate induced displacement is framed under international law, particularly I aim to inquire whether the existing legal frameworks that are in place are able to provide human rights protection to individuals that are crossing international borders as to flee from the impacts of climate

change in their home country. To carry on such objectives, I identified some research questions which will guide the structure of my research: *to what extent can climate refugees be recognized under existing provisions of international law? What are the challenges in the legal recognition of their status and what could possibly be some ways forward?*

To correctly answer to these questions, my research work will be based on a multidisciplinary approach which will include the review of international and regional legal instruments and procedures which are available for people fleeing from climate change impacts, paired together with a political reflection regarding the role of securitization processes in framing the phenomena of climate change and migration. The two dimensions, legal and political, must be regarded as mutually influential and in constant tension between one another. Indeed, the law can set a limit for political power and the establishment of political process, while politics is able to influence the interpretation of law, and legal progressive reforms depend on political will.

My thesis will be articulated through four chapters. In the first chapter I will give an overview of the phenomenon of climate refugees, reporting some data and trends regarding future projections of displacement patterns. Moreover, I will also deal with the definition of climate refugees. Currently, there have been different attempts to name such a phenomenon, but as of now, there has been no universally recognized and accepted definition of the term. Although the term has been around since 1985, when it was included in the report of the same name which was developed for the United Nations Environment Programme (UNEP) by environmental scientist Essam El-Hinnawi, international organizations of expertise, such as the United Nations High Council for Refugees (UNHCR) and the International Organization for Migrations (IOM), yet do not agree on a definition which can be universally recognized and employed. The lack of a specific definition for this category of individuals on the move is a major obstacle to their inclusion in legal systems: their ambiguous legal status does not distinguish them clearly enough from the category of economic migrants, which move to seek better living conditions, with all the implications for the protection of their human rights which comes with such a restricted interpretation of their status.

The second chapter aims to address, specifically, the gaps of the current international legal framework which should be responsible to frame this category of individuals within its provisions. Throughout this section I will explore different international and regional legal frameworks belonging to the legal branches of refugee law, customary law and human rights law. While reviewing the legal instruments in their traditional wording, I will report on the broader interpretations of specific articles of regional or international conventions which have been implemented over the years, particularly relying on some relevant legal cases concerning climate refugees. Past legal cases have been crucial in shaping practice on climate-induced displacement, as well as fundamental contributors to establishing important precedents for the development of more progressive and context-sensitive law.

The third chapter of my research will include considerations regarding the role of the securitization process in the development of different response strategies for climate refugees. Following the definition of securitization which was developed by the Copenhagen School, I will argue that both climate change and migration have been framed as security threats by a variety of political actors, opting for an approach which leaned more either towards State-security or human-security. Moreover, I will discuss three different theoretical approaches, neorealist, liberal and critical, which considered the security implications of the phenomenon in very different ways: the neorealist thought perceives climate change through national interests, while considering its impacts as catalyst for additional tensions; liberal theory is more concentrated on the ecological footprint which Northern States are mandated to contain, while critical theory highlights the ecological debts that Northern States have generated towards the Global South, ultimately establishing environmental insecurities. Following the theoretical assessment, I will apply such theories through the qualitative analysis of the security strategies that have been implemented over the past 20 years by the EU and the UN, particularly their response frameworks concerning climate change and migration. Through the analysis of these cases I aim to study how different levels of securitization can impact the development of different policy measures, as well as the interpretation of legal provisions concerning climate induced displacement.

Finally, in the fourth and final chapter of my research thesis, I will investigate a critical case study, which is the one of Pacific Island Countries (PICs), in relationship with one

of their main destination countries, New Zealand. Pacific Island Countries have always conceived migration as an adaptation strategy to improve their livelihoods, however, the worsening of climate change related events has been testing their natural capacity to adapt to environmental modifications, turning traditional migration patterns into forced displacement. Throughout this chapter, I aim to both assess the securitization level of New Zealand's policies for individuals from the Pacific Island Countries that are looking for asylum in their 'Pacific neighbor. At the same time, I will review the current legal framework of New Zealand to address migration, and how it could possibly be relevant to address the needs of Pacific Islanders who could be forcibly displaced by climate change impacts. In the chapter I will also discuss the preferred strategy to address climate change by Pacific Islanders themselves, as they see refugee protection as the last possible resort, while they tend to prefer the elaboration of resilience building initiatives to continue living in their home territories. If this won't be possible anymore in the future, the Pacific communities reinforce the necessity to build migration paths "with dignity", which can take into consideration their specific cultural identities.

Moving to the conclusions of my research, I will be assessing the findings of my work in light of the research questions that had been developed at the beginning. Moreover, I will present some conceptual insights which could be useful to develop progressive legal interpretation in the case of climate refugees, such as the principle of ecological vulnerability.

CHAPTER 1:

Who are the climate refugees?

1.1 Historical origins and evolution of the phenomenon (1890s-2010s)

Climate-induced migrations are often referred to as a new phenomenon in the global arena, an unprecedented critical issue that has been challenging the international community in the most recent years and that it will be part of future trends¹; however, early migration theories in the 19th century did, in fact, acknowledge environmental factors as significant drivers of population movement.

Before diving into the historical background of climate-induced migrations, it is crucial to perform a preliminary distinction between the category of migrants and the category of refugees, as they are easily misused interchangeably, especially in some unacquainted media narrative, yet the two categories contain a substantial difference in their legal value. Starting with the category of migrants, there isn't a universally agreed upon definition of a migrant, however, the common lay understanding defines both an internal and an international migrant as: *“a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons”*.² As regards the category of refugees, on the other hand, its legal status has been defined by the Geneva Convention of 1951 and its Protocol of 1967 as it follows: *“As a result of events occurring before 1 January 1951 and 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*

¹ A. Pécoud & E. Piguet, *Migration and Climate Change: An Overview*, Refugee Survey Quarterly, pp 2-23, 2011

² IOM, *Migration Factsheet No. 2 – Migrants*, 2020, link: https://www.iom.int/sites/g/files/tmzbd1486/files/documents/migration_factsheet_2_migrants.pdf (last access: 21/06/2024)

*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 (...)*³.

According to these two definitions, refugees can be interpreted as migrants who are displaced outside their country of origin *against their individual will* and because of a *well-founded fear of being persecuted*. This distinction between migrants and refugees will be a fundamental reading key to understand the historical evolution of environmental migration patterns.

An early report of environmental migrations comes from the research of E.G. Ravenstein, through his article “*The Laws of Migration*” published in 1889 by the Journal of the Statistical Society of London, he recognized that “unattractive climate” could be a relevant pushing factor for people to migrate, together with limitations on resources and potential health risks, which could motivate individuals to seek more favorable living conditions outside of their homeland.⁴ Another early mention of the strong connection between environmental conditions and human societies, comes from the American geographer Ellen Churchill Semple, in her book “*Influences of Geographic Environment*”, published in 1911, the author explicitly argued that the desire for better land, milder climate, and easier living conditions drives many migrations, which inevitably lead people to environments very different from their original homes⁵.

Nevertheless, mentions of climate-induced migrations began to thin out and disappear from the debate during the 20th century, most likely because of four reasons⁶: the first trend that influenced such lack of research is based on the Western-centric view that technological advancement would stem the limitations of an adverse environment that forced migration: some scholars, such as Petersen, saw environmental migration as an obsolete and primitive trend destined to diminish as humans refined their control over nature. However, this view would be criticized for being overly optimistic about technology's ability to solve all environmental problems, as it also ignores the historical

³ United Nations, *Convention relating to the Status of Refugees* (189 U.N.T.S. 150, entered into force April 22, 1954), 1951.

⁴ Ravenstein, E.G., *The Laws of Migration*. Journal of the Statistical Society of London, 48, 167-235, 1885.

⁵ E.C. Semple, *Influences of Geographic Environment*, New York, Henry Holt and Company, 1911.

⁶ supra note (1)

and ongoing impact of environmental factors on human movement. The second trend is based on overcoming earlier migration theories, as they were conceived in an overly deterministic manner, instead, the new migration theories took into account the importance of socio-cultural and economic aspects (following a Marxist/neoclassical approach) in the motivations behind migration. In fact, the rise of the economic paradigm supplants the focus on the environmental factors: job opportunities and poverty levels become determining factors in the decision-making process behind migration; however, a critique that is made to this approach condemns the exclusive focus on economic factors, since it overlooks the complex ways environmental issues can impact livelihoods, resources, and ultimately, migration decisions. Ultimately, the last trend that is reported implies that forced migration studies emphasized mostly how the home governments' actions can force people to flee, without taking into consideration the influence of environmental factors when deciding whether to escape the homeland or not.

During the 1970s, some early mentions and discussions related to the broader concept of environmental impacts on human populations and migration allowed that two important voices could emerge: the first being Lester Brown, founder of the Worldwatch Institute, he raised the alarm in his 1976 book "*World Without Borders*." Though not explicitly using the term "climate refugees," he warned that environmental damage could cause mass migrations leading to several dangerous consequences: indeed, such migrations can trigger humanitarian crises, with displaced populations facing relentless violations of their basic rights, such as shortages of food, clean water, shelter, and medical care as there are not enough resources in the host country to meet the needs of both the local population and the acquired population made up of migrants. The sudden influx of migrants in the host territory determines important social and economic consequences as well: the social fabric of the host country changes inevitably, generating potential political and social conflict and instability. When the flow of migrants must adapt to a new environment, there is a high risk of undergoing serious cultural changes that lead to a loss of the personal baggage of traditions and customs that they hold, and simultaneously, their country of origin loses social structures as well.⁷ Moreover, infrastructures in receiving areas, including transportation, healthcare, schools, and housing, may become

⁷ L.R. Brown, *World Without Borders*, Vintage Books, 1976

overwhelmed, lowering the quality of services. There are economic consequences as well, both for the sending and the receiving territory, as sending regions lose a portion of their workforce, while receiving areas struggle to provide services and jobs for the newly acquired population.

Similarly, in 1972 another point of view on the matter was brought by the global think tank Club of Rome, which commissioned a critical report called "*The Limits to Growth*", authored by Donella H. Meadows, Dennis L. Meadows, Jørgen Randers, and William W. Behrens III⁸. This report used computer modeling to analyze the long-term impacts of exponential population growth and finite resource use on the planet's ecosystems, highlighting potential environmental crises that could lead to social and economic disruptions, including forced displacement of people.

It is from the mid-1980s that climate-induced migration returned to be a significantly pressing topic in the international debate: due to a wider global awareness of climate change and its consequences for individuals and populations, the matter reentered into the agenda of international organizations and in academia.

In 1985, through the pioneering report "Environmental Refugees" presented by the environmental scientist Essam El-Hinnawi at the United Nations Environment Programme (UNEP), it developed an embryonal definition of the "environmental refugees". In his handout, El-Hinnawi describes this category of refugees as such: "*those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life [sic]. By 'environmental disruption' in this definition it means any physical, chemical, and/or biological changes in the ecosystem (or resource base) that render it, temporarily or permanently, unsuitable to support human life*".⁹ This foundation work provided a much clearer framework for understanding and discussing the phenomenon. El-Hinnawi, in fact, determined three distinct categories under such definition of environmental refugees: those displaced temporarily due to local disruptions, those permanently

⁸ D.H. Meadows (and others), *The Limits to Growth*; a Report for the Club of Rome's Project on the Predicament of Mankind. New York: Universe Books, 1972.

⁹ E. El-Hinnawi, *Environmental Refugees*, Nairobi, United Nations Environmental Program, 1985

displaced due to environmental changes, and finally those who migrate because of deteriorating environmental conditions.¹⁰ The author identified the causes that produce environmental refugees by providing a comprehensive analysis which involved natural disasters (e.g. floods and earthquakes), human-made disasters (e.g. industrial accidents with relevant environmental and humanitarian consequences), as well as progressive environmental degradation (e.g. the processes of desertification and deforestation).¹¹ The author dedicated a section of the report to call for international recognition of environmental refugees and the urgent need for coordinated global responses to the phenomenon. Among the policy suggestions that were mentioned, El-Hinnawi emphasized the importance of preventive measures as to address the root causes of the issue, sustainable development practices to mitigate the already-in-place effects of climate-induced migrations, and the establishment of strong legal and institutional frameworks to support and protect affected populations.¹²

Three years later, in 1988, Jessica Tuchman Mathews and Jacobson's paper titled "*Environmental Refugees: A Yardstick for Habitability*" built on El-Hinnawi's work, emphasizing the growing impact of man-made environmental degradation on human migration: the aim of their research was to provide numerical data through different case studies, as to estimate the extent of the phenomenon, arguing that millions of people were already affected and that this number would grow together with the worsening of environmental conditions¹³. Furthermore, the concept of habitability was introduced as the quantifying threshold to measure the endurance of environments for human life. The paper, as well as El-Hinnawi's report, called for international action on the matter, demanding for policy interventions to address the root causes of the phenomenon and to support the displaced populations.

Thus, at the end of the 1980s there had been some embryonic attempts to elaborate a definition of the environmental refugee category, mostly trying to bring to the attention

¹⁰ Ibid. p. 9

¹¹ Ibid pp. 11-15

¹² Ibid pp. 29-30

¹³ J. Jacobson, *Environmental Refugees: A Yardstick for Habitability*, Worldwatch Paper No. 86, Washington, D.C., Nov. 1988

of the international community the reality of such a situation, and alert over the potential risks of upscaling the phenomenon if steps were not taken.

Following the first attempt of El-Hinnawi to bring the matter upon the UNEP, in August of 1990 another organizational body asserted its position on climate-induced migrations, albeit not using explicitly the term “environmental refugees” that was employed by El-Hinnawi. It is the case of the Intergovernmental Panel on Climate Change (IPCC), the United Nations’ body responsible for assessing the science related to climate change and which provides regular assessments of the scientific basis behind climate change-induced events, its impacts and future risks, and options for adaptation and mitigation procedures.¹⁴ These data on the state of knowledge regarding climate change are open to States that are members of the United Nations or of the World Meteorological Organization (WMO).

The IPCC first Report¹⁵ was completed in August of 1990, and it comprised: the Overview, the IPCC Scientific Assessment, the IPCC Impacts Assessment, the IPCC Response Strategies (the last three including the respective Policymaker Summaries) and the Policymaker Summary of the IPCC Special Committee. It is now considered a landmark report that has become an essential reference for policymakers, scientists, and other experts in the field. The three working groups produced a detailed report focusing on different areas of intervention and research. Since the first working group, The IPCC Scientific Assessment, focused especially on the theory of physical sciences to understand the climate phenomena themselves, migration was not purely a focus of the group, which was significantly more contemplated in the research that was undertaken by the other two groups, the IPCC Impacts Assessment and the IPCC Response Strategies. The former, recognized climate-induced migration as one of the potential critical impacts of climate change. This group examined the vulnerability of different regions and sectors to climate change, including different climate-induced events that were similar to the ones presented by El-Hinnawi in 1985: sea-level rise, which could target low-lying coastal areas and small island states in particular to major displacement; extreme weather events, such as droughts or hurricanes, which were considered capable

¹⁴ <https://www.ipcc.ch/> (last access: 30/06/2024)

¹⁵ Intergovernmental Panel on Climate Change (IPCC), *Climate Change: The IPCC Scientific Assessment*, Cambridge University Press, 1990.

to potentially expose individuals to temporary or permanent displacement; agricultural disruption and water scarcity, which were determinant factors in obliging people to migrate from rural areas to urban territories or other regions. The group considered climate-induced migration as part of the broader set of socio-economic and environmental challenges which were exacerbated by climate change.

The latter working group, the IPCC Response Strategies, focused on developing strategies to mitigate climate change and readjust to its impacts, for this reason migration was contemplated in the adaptation strategies and in the international cooperation framework. In the adaptation measures the working group recognized the importance of planning, to be performed by the States, for potential population movements, in order to elaborate centralized policies to support and manage the displaced populations. Furthermore, the working group emphasized the necessity for international collaboration and cooperation to address the challenges posed by climate-induced migration, particularly acute for vulnerable countries and regions, so that they can be supported through burden-sharing mechanisms.

A fundamental takeaway from this report, which is shaped both as an assessment and a future projection of the phenomenon, was in the IPCC assertion that “*the greatest single impact of climate change could fall on human migration*”¹⁶, determining the displacement of millions of people due to extreme weather events and climate-induced environmental challenges.

Building on these considerations, another important contribution came from Norman Myers, a British environmentalist who was one of the first researchers in linking human displacement to the environmental deteriorations. In 1992, the estimated numbers of environmental refugees were believed to be around 10 million (whereas the total amount of refugees accounted for 17 millions), however, due to the fact that State governments don't usually consider this special category under the 1951 Geneva classification of refugees, Myers estimated that environmental refugees accounted for 25 million of individuals, mainly located in the Sub-Saharan area (the Sahel and the Horn of Africa).¹⁷

¹⁶ Ibid.

¹⁷ N. Myers. “*Environmental Refugees.*” Population and Environment, vol. 19, no. 2, 1997, pp. 167–82. (last access: 1st July 2024).

The important contribution of the author regarded another step forward the definition of environmental refugees: they were categorized based on the specific environmental pressures causing displacement, such as sea level rise, extreme weather events, and land degradation, as well as temporary or permanent displaced, voluntary and forced migration, and driven by internal or cross-border movements¹⁸. This specific mention of internally displaced individuals due to climate-induced reasons, included, for the first time in the different categorization attempts, those individuals who were forced to leave their home territory but without leaving the national borders of their country: the internally displaced people (IDPs).

Following the IPCC First Assessment in 1990, Myers estimated that due to the projections of climate-change induced consequences on migration patterns, if predictions on global warming are borne out, environmental refugees in a greenhouse - affected world would become 200 million by 2050.¹⁹ From these alarming numbers, Myers' position on environmental refugees was crystal clear: he pointed out that the current systems and institutions for dealing with refugees do not formally recognize or adequately address the needs of environmental refugees. This lack of legal recognition means that these individuals often do not receive the same protections and support as other types of refugees, such as those fleeing political or military conflict.

In an attempt to bring attention to the pressing issue of environmental refugees, which he defined potentially "*one of the foremost human crises of our time*",²⁰ Myers suggested employing the momentum and themes of the Cairo Conference on Population and Development, officially known as the International Conference on Population and Development (ICPD), which would have been held shortly after his publication, in 1994. However, even if during the forum environmental concerns were discussed in the context of sustainable development practices, the primary outcomes and agreements from the ICPD did not institutionalize measures specifically for environmental refugees. The conference's Program of Action did emphasize the importance of sustainable development and environmental protection, which are mostly related to the broader

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid. p.181

context of environmental displacement, but it did not establish a framework specifically for addressing the needs of environmental refugees.²¹

In the 1990s, the issue of environmental refugees was indeed starting to gain attention in public and academic discussions, even though it wasn't officially employed by institutions. Most of the research focused on providing preventive measures as the issue was still considered to be manageable, in order to take action towards the root causes that were producing environmental refugees. During these years the international community was mostly focused on the management of refugee flows coming from political conflicts and wars, such as those in the Balkans and Rwanda, while climate-induced migrants and refugees were not seen as urgent. The effects of environmental crises on migration were acknowledged to a limited extent, and there was no sign of opening towards the legal recognition of environmental refugees by the relevant institutions.

In the 2000s, the level of recognition and perception of environmental refugees began to evolve, reflecting a growing awareness of environmental issues and their potentially disastrous impact on human migration, among others.

In this decade the international debate on environmental refugees shifted focus because of two reasons: firstly, as the resettlement of refugees became a highly politicized and instrumentalized topic, it determined a general restrictive behavior coming from the international community, significantly influenced also by some high-profile terrorist attacks (as it was 9/11 in the United States) where refugees were often unjustly blamed. Secondly, the capability to predict the numbers of people displaced due to climate-induced motivations became increasingly vague and approximate, as being able to isolate environmental motivations from others was quite complex, and international attention remained for conflict-induced refugees²².

The Intergovernmental Panel on Climate Change (IPCC) released two additional significant assessment reports in 2001 and 2007: the first one, the IPCC's Third Assessment Report (TAR), recognized the increased frequency and intensity of extreme

²¹ United Nations Population Fund, *Programme of Action*: Adopted at the International Conference on Population and Development, Cairo, 5-13 September 1994 (New York: UNFPA, 1994).

²² P. Bose, *Nexus dynamics: the impact of environmental vulnerabilities and climate change on refugee camps*, Oxford Open Climate Change, 2024, 4(1)

weather events, such as storms, floods, and droughts, these changes were predicted to exacerbate environmental degradation and resource scarcity, potentially leading to displacement and migration²³. The report identified vulnerable regions (referring in particular to the case of Pacific Islands) which were exposed the most to climate change impacts and whose populations would have to emigrate from their homeland in the foreseeable future. The Fourth Assessment Report (AR4)²⁴ built on findings coming from the TAR, and it stressed the importance of the concept of human security (in which environmental security was included), noting that climate change could undermine human security by increasing resource scarcity, exacerbating conflicts, and displacing populations. Both the reports called for integrated policies that could address both mitigation and adaptation to reduce the impacts of climate change on vulnerable populations, however the formal recognition of the category of environmental refugees remained elusive.

Over the following 15 years, up to the present 2024, there have been numerous stances among academics and scientists regarding the need to find a working definition with legal standing for this category of individuals who are in extremely vulnerable conditions, however, the topic is still very delicate. Doubts persist starting with what is the correct terminology to be able to refer to this category without interfering in the different and already existing legal definitions of IDPs, refugees and migrants, with the knowledge that this issue is becoming more and more urgent and influential in the different international dynamics.

1.2 Controversies on the definition and terminological debate

As El-Hinnawi was the first to formally define and introduce the term "environmental refugees" into the academic and policy lexicon, a substantial terminological debate has become to emerge over which nomenclature to use to effectively define that category of

²³ IPCC, *Climate Change 2001: Synthesis Report. A Contribution of Working Groups I, II, and Intergovernmental Panel on Climate Change* [Watson, R.T. and the Core Writing Team (eds.)]. Cambridge University Press, Cambridge, United Kingdom, and New York, NY, USA, 398 pp. 2001

²⁴ Intergovernmental Panel on Climate Change, *Climate Change 2007: Synthesis Report*, based on a draft prepared by Lenny Bernstein et al., Valencia, Spain, November 12-17, 2007.

people who are compelled to leave their home territory in order to escape threats induced by adverse climate factors, that do not allow them to sustain adequate living conditions.

In the next chapter of this research, the main reasons that make this debate complex and difficult to implement practically in the legal framework will be presented. When using the word "refugee", indeed, reference is made to the definition contained in the 1951 Geneva Convention and its Protocol of 1967, as reported above, where the causes of persecution that impose forced displacement of the people involved are legitimized only if they are compatible with issues of race, religion, nationality, membership of a particular social group, or political opinion, leaving every other cause of persecution that are not explicitly listed in the definition – as climate change could potentially be – out of the relevant debate, and, as a consequence, stripping away the legal value and protection regime that these oppressed people could access if they could fall under the status of refugee.

Since the 1990s, scholars have been debating whether it should be considered to provide alternative classification to the term “climate refugees”, suggesting terms such as "climate migrants," "environmental evacuees," and "displaced people", as they do not trigger the same legal implications that the word “refugee” holds. The root causes of the relationship between migration and climate change have been debated by two schools: the maximalist school and the minimalist school²⁵. The maximalist approach argues for a direct and causative link between climate change and migration, building on scientific findings that demonstrate a clear connection between extreme weather events and people displacement, but without taking into consideration social, economic, and political factors that also play a significant role in influencing migration patterns. The minimalist approach, on the other hand, emphasizes the complexity of the interaction between environmental, social, and economic issues, thus they do not accept terms such as “climate refugees” asserting that it would oversimplify the matter.

²⁵ H. Ayaziy, & E. Elsheikh. "*Climate refugees: The climate crisis and rights denied*", Othering & Belonging Institute at UC Berkeley, 2019

Minimalist scholars such as McGregor²⁶ and Kibreab²⁷ repudiated the definition of climate refugees, deeming it excessively vague and legally tenuous: in fact, referring to the definition contained in the 1951 Geneva Convention, they pointed out that those who are displaced for climate-induced reasons do not fall under the protection regime because their reasons are not compatible with those made explicit in the definition, thus there is the need to develop a more precise terminology and legal framework to protect such category without compromising the effectiveness of the already-in-place legal tools that defend the rights of refugees.

According to those that deny the usefulness of the “climate refugees” terminology, the vagueness of the definition pairs with the difficulty in finding reliable data which refers to people that are being displaced exclusively due to climate-related reasons, since it is quite challenging to detach them from the socio-economic reasons which push individuals to migrate from their place of origin in search of better life conditions. Kibreab highlighted that by employing the word “climate refugees”, there is the risk to oversimplify and discard all that complex set of economic, social and political motivations which lead to the displacement of individuals.²⁸ Some scholars tried to answer to this limitation by providing an alternative categorization: “the survival migrants” term proposed by Betts, for example, which would encompass both economic and climate change migrants who flee their homeland forced by “*an existential threat to which they have no access to a domestic remedy*”²⁹. However, in this case the nomenclature “migrant” does not encapsulate significantly the forced nature that determines the displacement, and not the free-will induced movement, of the individuals involved. Another alternative designation to the phenomenon comes from the contribution of Gorlick, who in 2007 proposed to employ the term “environmentally displaced persons” to define the people that are endangered by environmental and

²⁶ J. McGregor, “*Refugees and the environment*”. In Black, R. and Robinson V. (eds.) *Geography and Refugees: Patterns and Processes of Change* London: Belhaven, 157-70, 2001.

²⁷ G. Kibreab, “*Migration, environment and refugeehood*”. In: Zaba, B. and Clarke. J. (eds.) *Environment and Population Change*, Liège, Belgium: International Union for the Scientific Study of Population, Derouaux Ordina Editions, 115-29, 1994.

²⁸ G. Kibreab “*Environmental causes and impact of refugee movements: a critique of the current debate*”, *Disasters* 21(1): 20-38., 1997.

²⁹ A. Betts, *Survival Migration: A New Protection Framework. Global Governance: A Review of Multilateralism and International Organizations*. 2010. Vol. 16, no. 3p. 361–382. DOI 10.1163/19426720-01603006.

ecological disruptions. The author carefully did not use the word “refugees”, since he asserted that the term carries politically charged implications.

Another crucial issue which has been brought up regards how to consider those individuals who are displaced but have not crossed the border of their home country: can internally displaced people (IDPs) be encompassed in a hypothetical categorization of climate refugees? Or do they need a separate legal framework for their specific situation? Currently IDPs are protected under the Guiding Principles on Internal Displacement, a non-binding document, which provides a framework for their protection but lacks the enforcement of international law; opting for a unified approach which encompasses both IDPs and individuals that cross international borders would expand the protection mechanism reserved to refugees, but at the same time it could interfere with the national protection mechanisms and their States’ instances of sovereignty, as IDPs are under the jurisdiction of the national State where they are, while for those that cross the international border fall under the international protection mechanism of the Geneva Convention.

On the 18th of April of 2023, the former Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, presented a report to the United Nations Human Rights Council where he gathered all the different nomenclatures that are currently being debated, as well as those adopted by the different entities that submitted their contribution to the document³⁰. The former Special Rapporteur states that there are different nomenclatures coming from different States ("climate change migrants" for voluntary moves and "displaced" for forced moves according to Poland; Switzerland used "environmentally induced migration", while the USA, “climate-change related migration”) and from organizations, for instance the International Organization for Migration (IOM) used the terms “environmental migrant” or “displaced person” to refer to such phenomenon.³¹ Another submission to the report referred to “climate mobility”, encompassing a set of movement types such as

³⁰ United Nations Human Rights Council, *“Providing legal options to protect the human rights of persons displaced across international borders due to climate change,”* Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, Fifty-third session, 19 June–14 July 2023, A/HRC/53/34, 18 April 2023.

³¹ International Organization for Migration (IOM), *“Glossary on migration”*, 2019. Available at: [link](#) (last accessed: 02/07/2024)

displacement, migration, planned relocation and evacuation; however the former Special Rapporteur highlighted that using the shortened term of “climate”, instead of “climate-change” could create some confusion over which category of weather-related events are to be considered in our categorization; moreover, he stated, very accurately in my opinion, that the term “mobility” does not account sufficiently for the human-rights violations that displaced individuals for climate change-related events face during their relocation.³²

The former Special Rapporteur reported the nomenclature given by The Nansen Initiative on Disaster-Induced Cross-Border Displacement, which used the term “cross-border displaced persons in the context of disasters and climate change”³³. A workable definition indeed, however the definition of “disasters” conceived by the Platform on Disaster as “*serious disruption of the functioning of a community or a society involving widespread human, material, economic or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources*” do not take into account that climate change can have impact on a singular individual, without bringing widespread losses.³⁴ Another concept that has been brought up in the debate is the term “adaptation”, meaning that following extreme weather-related events people are forced to relocate as an “adaptation strategy”³⁵, however this definition underplays the forcing of their displacement, as they are escaping the effects of such events, not naturally readapting to them³⁶.

Displacement is a fundamental concept and a crucial term to work with, according to the former Special Rapporteur, which could descend from a sudden climate change event, or it may be due to a slow progressing climate change event, such as a drought or sea level rise³⁷. In most cases, people that find themselves in these circumstances are forced to

³² Ibid.

³³ Ibid, Platform on Disaster Displacement, “*Strategy, 2019–2022*”, 2019

³⁴ Ibid.

³⁵ IOM, “*Regional report: highly vulnerable migrant flows and border mobility in Guatemala, Honduras, El Salvador, Costa Rica and Mexico*”, 2021

³⁶ Supra note (29)

³⁷ Supra note (29)

move against their own will, and probably because they can't receive relief from their State of origin.

The international debate has been traditionally divided ever since the phenomenon became more and more known and pressing to the international agenda, and it is still very challenging to find a term that can satisfy all the different parts involved. Among those who deny the possibility of change in the current refugee legislation, probably particularly interested in not having to provide additional support to more individuals, and those that believe that it is imperative to expand the current legal framework as to give an answer to an issue that becomes more and more critical, the climate-change impacts are now clearer than ever. It is fundamental to keep the debate active and productive, as to provide a satisfactory definition to this category of individuals and not to isolate them, and ultimately excluding them from benefiting from an ad-hoc protection framework.

In this research I will be using the term "climate refugees" to refer only to individuals who are forcibly displaced beyond their national borders by short- and long-term natural disasters as well as by gradual environmental degradation, determined or exacerbated by the climate change crisis. Such short-term disasters consist of typhoons, hurricanes, wildfires, and tsunamis, while long-term environmental changes include desertification, deforestation, rising temperatures, and rising sea levels, among others. Even if many relevant institutions prefer to use the word "migrant" for a diverse set of reasons ranging from political and financial implications associated with recognizing and addressing climate-induced displacement to legal implications, for the purposes of my research and the politically charged nature of such phenomenon I choose to refer to them with the term "refugees", with all its implications.

1.3 Trend, threats and projection of further development

As mentioned in the previous paragraph, in 1997 Oxford's University professor Norman Myers estimated that by 2050 there would have been more than 200 million of people

who will be forced to move over the long term as a direct result of climate change³⁸. These numbers represent a disturbing projection of the future world: they represent an increase of ten times more than the current documented refugees and internally displaced populations, according to the IOM³⁹. The organization stated also that by 2050, 1 individual out of 45 people worldwide will be displaced because of climate change, even surpassing the current number of global migrants.

Moreover, individuals who migrate to escape extreme weather events determined by climate change, while at the same time altering the new environment in which they find themselves, they also generate further demographic, social, economic, and again environmental complex challenges, ultimately creating an endless cycle of human insecurity.

In order to prevent such catastrophic forecast to happen, it would be of fundamental importance for the international community to have reliable data to be able to understand the numerical magnitude of the issue: however, there is no absolute scientific certainty about the actual numbers of people who are displaced by climate change events, and scientists often find themselves having to rely also on strong assumptions, when providing predictions of such phenomenon.⁴⁰For these numerical uncertainties, the projection data of climate displaced individuals by 2050 ranges between 25 million and 1 billion.⁴¹

As the scientific base for the meteorological impacts of climate change is well established, it cannot be said the same for its effects on migration: the IOM states that this is based on the degree of unpredictability that human migrations carry with them, as societies can adapt very differently to extreme-weather events, and it is very challenging to separate between economic "pull" factors and environmental "push" factors.

Despite the difficulty in providing certain data set, it is possible to confidently state that climate change will make parts of the world significantly hostile to live in, by causing food and water supplies to become more unreliable and less available, as well as

³⁸ Supra note (17)

³⁹ IOM, *Migration and Climate Change*, IOM Migration Research Series, no. 31, 2008

⁴⁰ Ibid.

⁴¹ Ibid.

increasing the frequency and severity of floods and storms⁴². In 2023, the IPCC elaborated its Sixth Report on Climate Change (AR6), which recognized the interdependence between climate, ecosystems, biodiversity and human societies. The hundreds of scientists and policymakers who contributed to its publication, talked about the issue of human mobility driven by climate change impacts, among the topics that were discussed in the report. Since the previous report, the so-called AR5, which was published in 2014, there have been increasing proofs that climate hazards related to extreme weather events directly and indirectly drive involuntary migration and displacements by worsening climate-sensitive environments.⁴³In 2022, for example, 70% of refugees and asylum seekers were coming from highly climate-vulnerable countries, an increase from the 56% registered in 2012.⁴⁴

By 2099, the world is expected to be on average between 1.8°C and 4°C hotter than how it is now, as the progress rate and scale of the actions and plans that have been taken and elaborated so far are not enough to keep the global warming under the 1.5° threshold, as IPCC had warned about back in 2018.⁴⁵ The IOM discusses that there are concurring processes, such as urbanization and population growth, which complicate the ability to detach climate change responsibility in displacement. Most of the States, especially “developing states” which are the most afflicted by the phenomenon, together with international institutions as well, do not possess the needed tools to provide reliable data to measure such phenomenon, especially when it comes to cross-border displacement.

On this extent, the Special Rapporteur on the promotion and protection of human rights in the context of climate change, is concerned that there is a general reluctance in

⁴² Ibid.

⁴³ H. Portner (et. alt), *Climate Change 2022: Impacts, Adaptation and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 37–118, 2023

⁴⁴ UN High Commissioner for Refugees (UNHCR), *UNHCR Focus Area Strategic Plan for Climate Action 2024-2030*, March 2024, <https://www.refworld.org/policy/strategy/unhcr/2024/en/147980> [accessed 08 July 2024]

⁴⁵ IPCC, *Summary for Policymakers*. In: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* [Masson-Delmotte & others (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 3-24, 2018.

international institutions to provide statistics of people that are displaced for climate-change related events and that crossed international borders, preferring to focus mostly on internally displaced individuals⁴⁶. Even if these organizations appeal to the complexity of calculating and reporting such data, together with the legal challenges that cross-bordering carries with, it is imperative for international institutions to recognize the plight of cross-national displacement due to climate change, which afflicts the most those individuals that have contributed the least to the general deterioration of climate change⁴⁷.

Indeed, the Special Rapporteur reported that there have been numerous cases of cross-national displacement driven by climate change-related events, such as Somalia to Kenya displacement, whose 75% of its new displacements were attributed to climate change. In 2022 Kenyan refugee camp in Daab hosted 60.000 Somali refugees and asylum-seekers who had been escaping a severe drought in the previous 12 or 18 months.⁴⁸

Unfortunately, this is not an isolated case: according to the IPCC⁴⁹ millions of people in Central and South America, Africa, and South Asia could be forced to move due to climate change by 2050, individuals in these areas, indeed, have the most considerable share of at-risk populations of becoming climate refugees⁵⁰. Estimates suggest this number could be anywhere between 31 and 143 million⁵¹. Central American states such as Honduras and Guatemala are also listed as vulnerable areas, according to the Special Rapporteur and the IPCC: in 2016 over 3.5 million people needed humanitarian assistance due to an extended drought in El Niño.⁵², which provoked, among its many consequences, an amplification of the outbreak of the Zika⁵³. Environmental complications caused a significant increase in crossing the border with the United States, especially for the younger and most vulnerable populations. When in 2020, two hurricanes destroyed fundamental infrastructures and livestock in Honduras, many

⁴⁶ Supra note (29)

⁴⁷ A. G. Crutchfield, *Reframing the Response to Climate Refugees*, Documento de Trabajo, Serie Unión Europea y Relaciones Internacionales, Número 104 / 2020 (CEU Real Instituto Universitario de Estudios Europeos, Universidad San Pablo, 2020).

⁴⁸ Supra note (29)

⁴⁹ Supra note (45)

⁵⁰ Supra note (45)

⁵¹ Supra note (38)

⁵² Supra note (29)

⁵³ supra note (25)

people were forced to flee across the international borders, and a representative of a civil society organization from Latin America reported that some of the individuals that were displaced invented that their displacement was due to persecution by gangs or militia group, instead of telling that it was in reality caused by consequences of extreme climate events, in order to have more chances to fall under the regime of international protection granted for “traditional” refugees.⁵⁴

Human activities, whereas green-houses gas emissions hold the first place, have been causing a general rise in the Earth’s temperature. This global warming has determined the melting of glaciers and polar caps, and subsequently it caused sea levels to rise. It is now believed that continued growth in greenhouse gas emissions over the next several decades could trigger an unstoppable collapse of Antarctica’s ice, rising sea levels by more than a meter by 2100 and more than 15 meters by 2500.⁵⁵ Coastal populations are particularly vulnerable to this phenomenon: they have increased significantly in number over the past three decades, going from 1.6 billion to over 2.5 billion, with a significant portion residing in the Global South.⁵⁶ They are particularly vulnerable because of three specific reasons: first, the threat of rising sea levels could eventually lead to the submersion of their territories⁵⁷. Indeed, island-nations such as Kiribati and Tuvalu, or the Maldives, could face mass evacuations of entire populations, as well as the actual disappearance of their States.⁵⁸ They are risking not only the forced displacement from their homeland, but also being denied the possibility to ever return if such territories are swallowed by the sea, leaving entire populations stateless and without the possibility to exercise their fundamental rights as citizens. Secondly, they face a particularly harmful impact on coastal ecosystems: many coastal populations rely on their ecosystems for their survival, and for example, the influx of fresh water from melting ice caps could harm saltwater ecosystems, leading to a decline in their fishery activities. Lastly, as ecosystems are being modified by climate change-related events, the disappearance of natural

⁵⁴ Supra note (29)

⁵⁵ Supra note (53)

⁵⁶ Supra note (53)

⁵⁷ Supra note (53)

⁵⁸ Supra note (29)

protections like coral reefs, salt marshes, and barrier islands heightens coastal hazards, and puts in danger the local populations.⁵⁹

Rising temperatures due to green-house gas emissions result not only in rising sea levels, but also in excessive droughts that cause rivers to dry up, extinguishing the livelihoods of entire populations.

1.4 Different implications for climate refugees

Climate refugees face different challenges in their displacement and resettlement, they can experience vulnerability and difficulties in several ways, such as economical losses, human rights violations and social unrest. All the implications of such a phenomenon, together with the trends projections that have been presented in the previous paragraph, have all the potential to escalate into a worldwide emergency, influencing regional balances and national policy guidelines towards migration issues.

The phenomenon of climate-change related events does not exclusively translate into extreme weather events such as droughts or typhoons, instead the climate crisis can also be the driver of indirect impacts on environments, determining secondary outcomes such as joblessness and competition over resources. The climate crisis disproportionately affects individuals living in the Global South, who face unique economic challenges as their local economy is strongly attached to rural environments, and most of the time their local infrastructures are inadequate in administering resources and responding to disasters. Consequently, many people in these regions are forced to migrate, often internally, as crossing national borders is not always feasible. Individuals that are displaced internally, generally try to move from rural areas towards the cities, however they often struggle with unemployment and poverty, because their skills in agriculture or herding are not easily transferable to urban settings⁶⁰. The lack of suitable employment opportunities and the high cost of living in urban areas can quickly deplete whatever financial resources displaced individuals may have. The World Bank estimates, indeed, that climate change could push an additional 100 million people into poverty by 2030,

⁵⁹ Supra note (53)

⁶⁰ Supra note (53)

primarily in Sub-Saharan Africa and South Asia⁶¹. These economic challenges are to be added to other difficulties such as access to social services, housing and decent living conditions. Another significant economic implication which is provoked by the arrival of thousands of displaced people in a new territory refers to competition over already limited resources, such as food, water or housing. These deprivations can lead to serious health issues and hinder their ability to rebuild their lives. Former UN High Commissioner for Refugees and current UN Secretary-General António Guterres has highlighted that climate refugees can intensify resource competition and provoke conflicts. In facts, for example in regions where water scarcity is already a significant issue, the arrival of additional people can strain resources to the breaking point, leading to potential conflicts over access and usage⁶². Economic challenges faced by climate refugees have long-term implications for both the displaced individuals and the host communities. The burden of a much greater number of individuals on urban infrastructure and services can hinder local economic development and growth. Additionally, the inability of climate refugees to find stable employment and integrate into the local economy can lead to a cycle of poverty and dependency, preventing them from contributing positively to their new communities and to sustain themselves and their families.⁶³

Climate change displacement poses significant challenges in the field of human rights too, especially for those crossing international borders. Although displacement due to climate change-related reasons is treated largely as a phenomenon of internal mobility, it was shown priorly in the chapter that there have been a variety of cases of individuals crossing international borders for the purpose of escaping extreme weather events. Beside the challenges that internally displaced individuals face that endanger their economic, physical and mental security and wellbeing, people that cross international borders are facing even greater threats in terms of human rights violation. They are often denied their right to food, water, sanitation, housing, health, education and, for some, the right to life.⁶⁴ The human rights' protection of climate refugees is even more complicated

⁶¹ K.K. Regaud (et alt.), *Groundswell: Preparing for Internal Climate Migration*, World Bank, Washington DC, 2018.

⁶² Ibid.

⁶³ Supra note (60)

⁶⁴ Supra note (29)

for gender-oppressed categories: studies show that women are fourteen times more at risk of being killed by an extreme event related to climate change, and are also the category, along with children, most vulnerable during the cross-border process⁶⁵. Indeed, the Special Rapporteur gathered a set of testimonies of people displaced across international borders facing a variety of risks, such as abuse, violence, trafficking, exploitation and other forms of maltreatment⁶⁶. Even if there has been institutional recognition of a clear link between climate-induced migration, displacement and modern slavery (comprising of forced labor and exploitative sex work), still there are no targeted policies able to contain such phenomenon and protect the individuals that are victims of such violence. In March of 2024, the IOM published the death toll of people fleeing persecution, poverty and conflict in its Missing Migrants Project: since 2014, at least 63,285 people have died or are missing and presumed dead, according to the project, with over 8,500 losing their lives in 2023, the deadliest year yet. According to former Special Rapporteur Ian Fry, a good percentage of them were undoubtedly people displaced across international borders due to climate change impacts in their national territory.⁶⁷ More than half of these victims were trying to reach Europe through the Mediterranean routes, with a total amount of 27.000 individuals succumbing, mostly by sinking at the sea or at the hands of criminal networks and armed groups, in this dangerous journey which usually starts from Northern African states towards Southern Europe.⁶⁸ To this extent, studies from the OHCHR reported that in Libya there is systematic murder, torture, rape, threat of rape, killings, sexual violence, enslavement, racial abuse and beatings perpetrated against individuals trying to flee by some State authorities, militias, armed groups and traffickers. Among the 60.000 migrants of more than 10 nationalities that were registered in Libya in 2018, in a focused study on Gambian displaced individuals, climate change-related events were considered drivers for their displacement, and probably this is also the case for a good portion of the other migrants on Libyan territory.⁶⁹

⁶⁵ Supra note (29)

⁶⁶ Supra note (29)

⁶⁷ IOM, *Missing Migrants Project*, 2024, available at: <https://missingmigrants.iom.int/data> (last accessed: 10/07/2024)

⁶⁸ Supra note (29)

⁶⁹ Supra note (29)

Border security is another threat to the safeguard of displaced individuals' human rights. The high securitization of borders, as well as border personnel becoming more and more brutal, heavily armed and restrictive, is becoming a general trend in the latest years, and it does not seem to slow down. The categories of individuals that are the most affected by the high militarization of borders are, again, gender-oppressed categories: domestic and gender-based violence is increasing, due to such measures, making women, children and people belonging to the LGBTQ+ community highly exposed to such dangers⁷⁰.

It is also important not to forget that some people are not able to move during a climate change event. There are a good number of individuals who are trapped because they cannot flee from their homeland for a variety of reasons, being fewer economic opportunities, social circumstances or even their age.

The increasing flow of individuals displaced due to climate change-related reasons is significantly complicating regional equilibriums and exacerbating tensions of different kinds in various parts of the world as well: indeed, the phenomenon of climate-induced migration unfolds within a growing securitization narrative. National and international actors increasingly view this displacement through a security lens, often leading to stricter border controls, restrictive immigration policies, and a militarized approach to border management. The "Fortress Europe" exemplifies this trend with the establishment of more and more restrictions to handle the influx of migrants and refugees fleeing climate-induced hazards in North Africa and the Middle East. Similarly, the United States has framed climate change as a "threat multiplier" influencing migration patterns from Central America⁷¹. Consequently, the country has developed a policy response based on border security and stringent immigration measures.

Securitizing climate-induced migration not only hinders humanitarian efforts but also inflames xenophobia and societal tensions at the local level. This lack of cooperation and commitment significantly destabilizes regions already struggling with the impacts of climate change. As the frequency and intensity of climate-related disasters escalate, it's crucial to address the root causes of such a phenomenon, starting with taking a firm and

⁷⁰ Supra note (29)

⁷¹ Supra note (53)

clear position regarding the protection regime in which migrants and climate refugees should be protected, so that they are not left at the mercy of numerous liabilities.

In the next chapter, I will analyze the main Conventions and legal instruments charged with protecting the human rights of climate refugees. I will highlight the legal gaps in these protection frameworks, which do not sufficiently take into account the needs and emergency situations of individuals that are forced to flee from their territory due to climate-change impacts, in light of the data reported in this chapter.

CHAPTER 2:

The gap of legal protection for Climate Refugees

2.1 Existing instruments of international law specifically protecting forcibly displaced individuals

Individuals that are forced to leave their homeland because they are persecuted by external actors, face extremely precarious and vulnerable conditions. As it was shown priorly for climate refugees, these people are often stripped from their homes, livelihoods, and communities, risking significant threats to their safety and well-being. This vulnerability necessitates a robust legal framework which could ensure their protection and uphold their rights. After World War II ended, millions of people were displaced across Europe, generating one of the worst refugee crises of modern history. To give an answer to such an emergency, the international community stepped up and developed a foundational legal framework, primarily embodied in the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol, which was in charge of recognizing refugees' rights and protecting them, defining their refugee status and enshrining critical principles such as non-refoulement and the right to seek asylum.

Since 1945, further developments of the refugee legal framework have been gradual and multifaceted, influenced by geopolitical dynamics, several humanitarian crises and the evolution of national and international norms. This evolution reflects the international community's growing recognition of the complex factors driving displacement and the need for comprehensive protection mechanisms.

In the previous chapter I have introduced the phenomenon of climate refugees, as in individuals that are forcibly displaced from their place of origins because of climate-change induced events. Despite their urgent need of protection, as they are growing in number and conditions are becoming more and more critical, climate refugees are not

explicitly recognized nor protected under any existing legal framework, exposing them to risks of different kinds. Recognizing this gap, the international community has increasingly acknowledged the necessity of addressing the protection needs of those displaced by climate change.

In the following subparagraph I will discuss the first international legal instrument which has been responsible to frame refugee rights, the Geneva Convention of 1951 and its Protocols of 1967. Then, I will move towards the most recent updates on the matter, analyzing the achievement of the 2018 Global Compact for Refugees, which marked the intention of State actors to provide an omni-comprehensive framework to commit to fair and collaborative responsibility-sharing practices for the management of large refugee flows. I will analyze the limitations of these two legal instruments in applying their principles for the category of climate refugees, discussing whether from the establishment of the Geneva Convention in 1951 to the achievement of the Global Compact there have been any noteworthy advances and progresses in the recognition of this migrant category and their inclusion in the international protection system.

2.1.1 The Geneva Convention Relating to the Status of Refugees (1951) and its Protocol (1967)

The Geneva Convention Relating to the Status of Refugees of 1951 constitutes the very first step to give an answer to the issue of refugees that was pressing the international community, especially since World War II ended and many people were left displaced outside of their original territory. Prior international efforts, such as the 1926 League of Nations Convention on the International Status of Refugees and the 1933 Convention relating to the International Status of Refugees, were limited in scope and effectiveness

In the creation process of the Convention, it was pivotal the contribution of the United Nations High Council for Refugees (UNHCR), which was founded in 1950, primarily to be able to respond to the crisis of displaced European refugees following World War II. The Convention was finalized during the 1951 Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, which was held in Geneva from July 2 to July

25 of 1951⁷². The Conference was attended by 26 country representatives, most of them coming from European countries or Western-affiliated, leaving most of the developing States out of the negotiations and discussions processes. The non-inclusion of developing states, which as reported briefly in the previous chapter, are the ones that bear most of the refugees, is pointed to as a decision that is based on the colonial-based Eurocentrism that characterized the way the refugee definition was approached and finally developed during the Plenipotentiaries Conference.⁷³ Indeed, during the debate regarding which kind of refugees to include within the Convention, two factions developed: from one hand there were the “Europeans”, led by representatives coming from France and the U.S., they claimed that “*only Europe was ready to address the refugee issue on an international scale*”. This stance excluded, among others, Palestinian refugees, flows of displaced individuals originated from the Korean War, as well as the refugees deriving from the newly born states which had recently gained independence, such as India or Pakistan⁷⁴. On the other hand, the counterpart was composed by the “internationalists”, who were advocating for a broader category of individuals who could benefit from the refugee status beyond the time and space limitations that had been imposed from the other group. This faction was led by the UK, representatives of observing NGOs and some non-European states that were invited to the Conference, such as Egypt and Iraq. Despite the internationalist front's pressure to make the category of refugees deserving of international protection broader, it is pointed out that the positions of some States (traditionally rooted in colonialism) were actually motivated by drives that were anything but humanitarian. Instead, their stances were governed by national interests, geopolitical influences (as the Cold War era was entering its initial stage) and economic considerations.⁷⁵ In order to reach a compromise and mediate between the two factions' positions, the Holy See, which was attending the Conference as well, made a proposal which consisted of the possibility for ratifying States to make reservations or declarations about the geographical application of the 1951 Refugee Convention. This would have

⁷² A.B. Karakay, “*Who is a refugee? A critical assessment of the 1951 Geneva Convention*”. Van Yüzüncü Yıl University the Journal of Social Sciences Institute, 62, 173-184, 2023.

⁷³ Ibid.

⁷⁴ U. Krause, “*Colonial roots of the 1951 Refugee Convention and its effects on the global refugee regime*”, Journal of International Relations and Development (2021) 24:599–626, 2021.

⁷⁵ Ibid.

allowed to achieve broader consensus and participation among contracting States, enabling a flexible level of adaptation and commitment to the Convention.

The outcome of the negotiation process would translate into the adoption of a definition which applied almost exclusively to the individuals who were displaced in Europe. Indeed, the 1st article of the Convention states that a person shall be recognized as refugee if they had been displaced “*as a result of events occurring before 1 January 1951*”⁷⁶, which applied mostly to Europeans. The possibility to make reservations to the geographical limitation (but not to the time one) was included in the second point of Article 1 (B) of the Convention: “*Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.*”⁷⁷

On the 4th of October of 1967, thanks to the advocacy work of UNHCR, States, NGOs and individuals, a Protocol was added to the Geneva Convention Relating to the Status of Refugees. Such Protocol acknowledged that “*new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention*”⁷⁸, thus they extended the refugee definition as follows:

*“1.2. For the purpose of the present Protocol, the term “refugee” shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article I of the Convention as if the words “As a result of events occurring before 1 January 1951 and...” and the words “...as a result of such events”, in article I A (2) were omitted.”*⁷⁹

Article 1 (2) effectively removed the temporal limitation from the 1951 Convention, making the refugee definition timeless and applicable to any person who meets the criteria, regardless of when they became a refugee.

⁷⁶ Article 1 convention (A)

⁷⁷ Article 1 Convention (B)

⁷⁸ United Nations, *Protocol Relating to the Status of Refugees (Preamble)*, 1967, entry into force 4 October 1967, Preamble, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-relating-status-refugees> (last accessed: 25/07/2024).

⁷⁹ United Nations, *Protocol Relating to the Status of Refugees (Preamble)*, 1967, entry into force 4 October 1967, Article I, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-relating-status-refugees> (last accessed: 25/07/2024).

“1.3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation”, save those existing declarations made by States already Parties to the Convention in accordance with article I B (I) (a) of the Convention, shall, unless extended under article I B (2) thereof, apply also under the present Protocol.”⁸⁰

The following point, Article 1 (3), removed geographical limitations, rendering the Convention applicable everywhere in the world. However, the article included existing reservations made by States under the original Convention unless those same States decided to expand their application.

Contracting States could, in fact, make reservations to certain provisions of the Convention, as it is explicated in article 7 (1) of the Protocol:

“7.1 At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16(1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.”⁸¹

This paragraph implies that States are allowed to make reservations (and in the following paragraph of the same article it specifies that those States that already made reservations under article 42 of the Convention shall consider those reservations applicable for the Protocol also), displaying a good amount of flexibility in the adoption process of the Protocol. However, the paragraph asserts that States are forbidden to make reservations on the very fundamental articles of the Convention, such as articles 1, 3, 4, 16(1), and 33, which cover respectively: key definitions, non-discrimination, religious rights, free access to courts, and the principle of non-refoulement, as in the prohibition against returning refugees to their places where they could fear threats to their lives or freedom.

While most States have removed both geographical and temporal limitations by acceding to the 1967 Protocol, a few exceptions still remain as of today, particularly regarding

⁸⁰ Ibid.

⁸¹ United Nations, Protocol Relating to the Status of Refugees (Preamble), 1967, entry into force 4 October 1967, Article I, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-relating-status-refugees> (last accessed: 26/07/2024)

geographical limitations. The States that still present a geographical limitation are Monaco, Congo, Turkey and Madagascar. While Madagascar still has not yet acceded to the Protocol, Turkey expressly maintained its declaration of geographical limitation upon acceding to the 1967 Protocol⁸². The case of Turkey is of great relevance since the country hosts more than 3 million of refugees coming from neighboring Syria. According to this reservation, only individuals coming from European countries of origin are entitled to permanent refugee protection under the 1951 Geneva Convention. On the other hand, those coming from non-European countries, like Syria, are granted temporary measures only: either conditional protection (if they fall within the refugee definition of the Geneva Convention), or subsidiary protection.⁸³

To the purpose of researching the legal status of climate refugees, it is relevant to focus on the first article of the Convention, which presents some elements that are potentially ambiguous and subject to possible broader interpretation.

The first article, as mentioned before, provided the internationally accepted definition of refugee: the basis for granting asylum in the current legal status relied on the existence (or well-founded fear) of individual persecution due to race, religion, nationality, membership in a particular social group or because of political beliefs. Motivations behind their forced displacement that do not imply the presence of a persecution, do not allow the individual to be classified as a refugee. This provision excludes a great number of factors, including climate change and environmental degradation.

The UNHCR guidelines state that there is not a universally agreed definition of persecution, hence the interpretation that the organization has given perceives persecution as a threat to life or freedom based on the aforementioned grounds⁸⁴. However, the guidelines also acknowledge that other severe human rights violations could be

⁸² UNHCR, "*Handbook and Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection*" available at: <https://www.unhcr.org/sites/default/files/legacy-pdf/5ddfc47.pdf> (last accessed July 25, 2024), p. 73, Geneva 2019 (reissued)

⁸³ Asylum Information Database (AIDA) and European Council on Refugees and Exiles (ECRE), "*Country Report: Introduction to the Asylum Context in Türkiye*," last updated August 20, 2024, available at: <https://asylumineurope.org/reports/country/turkiye/introduction-asylum-context-turkiye/> (last accessed: 04/09/2024)

⁸⁴ supra note (11) p. 21

considered persecution, even if they don't directly threaten life or freedom⁸⁵. The dilemma behind the expansion of the subjects protected by the Convention relies in the fact that interpreting persecution too broadly could lead to almost anyone claiming refugee status (negatively impacting the quality and efficiency of the refugee protection system, as well as its reception capacity); while a narrow interpretation might deny rightful protection to those that are found in urgent need of security.

Traditionally, persecution has been interpreted through the “accountability theory”, which implies that harm towards citizens can be emanated primarily from State actors, governments or their agents. However, the modern understanding of persecution has evolved to recognize that, on certain occasions, non-State actors can also perpetrate persecution, especially in situations where the state is either unwilling or unable to provide protection to its citizens. This approach is called “the protection theory”.⁸⁶

Some scholars have also debated that, since there isn't a universally agreed definition of *persecution* which explicitly frames the criteria to be defined as such, it allows for an expanded interpretation, potentially including violations of economic, social, political, and even environmental rights.⁸⁷ Following this broad interpretation of persecution would allow to classify climate change related events like rising sea-levels as persecutors, and thus, a consistent threat to the exercise of human rights such as the right to life, to health or to subsistence⁸⁸. Indeed, it has been shown in the previous chapter that climate change-related events can affect people through direct physical impacts (such as fleeing from floods, cyclones, etc.) or through the exacerbation of complementary socio-economic effects (on infrastructure, shelter, accessibility to food and water supplies, etc.).

It is relevant for the sake of the recognition of climate refugees' legal status to understand when and whether the concept of persecution is linked to the one of discrimination⁸⁹. In the Handbook, the UNHCR gives a direction on the matter, stating that “*where measures*

⁸⁵ supra note (11) p. 21

⁸⁶ Calcaño, N. "Stuck in Limbo: Temporary Protected Status, Climate Migrants and the Expanding Definition of Refugees in the United States" (2021). Honors Projects. 294.

⁸⁷ R. Brears, “Environmental Refugees from the Maldives: Are They Protected?”, 2009, available at: <https://ssrn.com/abstract=1438822> (last accessed: 01/08/2024)

⁸⁸ Ibid.

⁸⁹ Elizabeth Keyes, *Environmental Refugees? Rethinking What's in a Name*, 44 North Carolina Journal of International Law 461 (2019).

*of discrimination are, in themselves, not of a serious character, they may nevertheless give rise to a reasonable fear of persecution if they produce, in the mind of the person concerned, a feeling of apprehension and insecurity as regards his future existence.”*⁹⁰

Following this stance, it would be possible to identify as discrimination governmental action or inaction towards climate change-related events, which notoriously affect disproportionately different sub-groups (determining their forced displacement even). Such discriminations could escalate into persecution if individuals that are subjected to them demonstrate a well-founded fear for their future existence⁹¹.

Such fears can be defined as persecution if governmental actions are intentionally discriminating against some individuals, in other words when the State fails to protect vulnerable categories among its citizens. Dr. Elizabeth Keyes demonstrates that there is a spectrum of governmental culpability, meaning that at one extreme, governments might deliberately subject sub-groups to environmental risks (e.g., forcing them to live in flood-prone areas), or that they are willingly failing to take steps to protect the persons under their jurisdiction from the effects of environmental degradation, ultimately denying the enjoyment of their human rights. Discrimination can be fueled by systemic racist dynamics towards certain ethnic groups. These patterns can be observed in the disproportional impact on Afro-American communities of New Orleans when facing Hurricane Katrina in 2005, as well as in the difficulty of Native Alaskans living on the shores in receiving State support over the environmental degradation of the area.⁹² Despite the existing racial inequalities being exacerbated by extreme climate conditions, it is complicated to demonstrate a direct link of governmental culpability. Recognizing such indirect forms of persecution would require broadening the interpretation of the Refugee Convention, which currently focuses on direct actions performed by the State.

On the other side of the spectrum, there can be generalized environmental harm which is not linked to governmental culpability (at least strictly speaking), as they are affecting the entire population indiscriminately, instead of targeting a specific sub-group. This is the case, for example, of the shared struggle of the people of the island of Tuvalu, which

⁹⁰ Supra note (13)

⁹¹ Supra note (15)

⁹² Supra note (16)

see its citizens exhausted by increasingly extreme weather conditions which seriously affect their survival on the island.⁹³

Furthermore, for a harm to be considered persecution under the Refugee Convention, there must be a direct nexus to one of the protected grounds mentioned in Article 1 (race, religion, nationality, membership in a particular social group, or political opinion) and an element of intent or deliberate negligence. This requirement poses a significant challenge in environmental cases where the harm is widespread for the whole population, and not targeted at specific groups.⁹⁴

Beside the ambiguity in the definition of the term “persecution”, another element of the refugee definition reported in Article 1 of the 1951 Geneva Convention is presented as potentially subject to reinterpretation, which is the “*membership of a particular social group*”⁹⁵. The inclusion of this criteria was advocated by different delegates during the drafting sessions of the Convention in order to cover individuals who might not fit neatly into the other aforementioned categories. This particular feature has been interpreted differently by various legal bodies and scholars to include groups that were defined either by immutable characteristics (such as ethnicity or gender) or by traits that were perceived by society as distinctive and unique to the group considered. Using this category to include climate refugees would involve interpreting the group as those individuals that are uniquely vulnerable to climate change impacts, however this would consequently translate in the distinctiveness of the group being defined solely by the very harm that they fear to face in the first place⁹⁶. In addition, it has been argued that being oppressed by climate change impacts is not an immutable nor innate characteristic.

Protected characteristics are likely to be found among individuals who are forced to migrate due to climate change, for example activists or party members particularly driven to protect climate-change issues could rightfully claim refugee status if they fear persecution due to their political opinions, and this would represent a direct application of the Convention’s provisions; to a similar extent minorities or gender-oppressed

⁹³ Supra note (16)

⁹⁴ M. Foster, *Causation in Context: Interpreting the Nexus Clause in the Refugee Convention*, 23 MICH. J. INT’L L. 265 (2002). Available at: <https://repository.law.umich.edu/mjil/vol23/iss2/4>

⁹⁵ Supra note (16)

⁹⁶ Supra note (16)

categories could make claims stating that they are being subjected to targeted policies of persecution due to their membership to a particular social group. However, to establish a direct nexus based *solely* on climate-change related impacts, and not because of other grounds protected by the Convention being exacerbated by climate change effects, could be very challenging and often unsuccessful for the asylum seeker⁹⁷ .

Additional provisions of the Convention which are worthy of being analyzed for the category of climate refugees are enclosed in Article 33 “*Prohibition of expulsion or Return (non-refoulement)*”, which recites as follows:

*“1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”*⁹⁸

As mentioned earlier in this chapter, this article cannot be subjected to reservation from Contracting States, as it represents one of the most crucial principles enclosed in the Convention, namely the principle of “*non-refoulement*”, which denotes the Convention’s strong foundation on a human rights-based approach. This principle could be effectively used by asylum seekers displaced by climate change effects, with the condition of demonstrating that their life or freedom could be threatened by serious environmental degradation, if they were to be repatriated. A condition that is not so easy nor immediate to achieve and demonstrate to the monitoring body, as stated prior.

This article still shows the criteria barriers that were encountered in Article I, meaning that threats that are considered under this provision must exclusively fall within the very narrow limits of “*race, religion, nationality, membership of a particular social group or political opinion*”, disregarding any other source of danger that the asylum seeker could face.

In a precedent case that involved a Kiribati national in 2015⁹⁹, the Supreme Court of New Zealand acknowledged the potential for climate change impacts to create pathways into

⁹⁷ Supra note (16)

⁹⁸ Supra note (8)

⁹⁹ Supra note (16)

the Refugee Convention. However, this possibility requires clear, individualized evidence linking the harm to persecution based on a protected ground enclosed by the Convention. When the claim presents a widespread threat being faced by the entire populations, rather than individual evidence of targeted persecutions in a very specific case, the judicial rule becomes too much open to interpretation. Precedent case law on the matter will be presented later in the chapter, as to understand the current stand of international quasi-judicial bodies.

Having delved into the criteria for admission into the refugee category under the provisions contained in the 1951 Geneva Convention, it can be said that the current Convention does not have the capacity to address the needs of individuals that are forced to flee from their homeland due to climate-induced motives. Indeed, the provisions of the Convention were conceived for a different context, thus they won't be able to efficiently accommodate the consequences of environmental displacement. Ultimately, the Convention does not adequately take into consideration the time dimension of preemptive and gradual movement, nor the maintenance of culture and statehood practices whether whole communities would have to relocate.¹⁰⁰

2.1.2 Global Compact for Safe, Orderly and Regular Migration; Global Compact on Refugees (2018)

In the early years of the 21st century, international migration had become a major global issue. The whole international community had been dealing with growing flows of undocumented migrants, as well as new challenges in migration patterns, such as trafficking, exploitation and even environmental degradation. As the issue was becoming impossible to ignore and to dislodge to other actors, the increasing media coverage of refugee crises increased public interest in the human rights violations that and asylum seekers often face before, during and after their migratory journey¹⁰¹. The need for a

¹⁰⁰ J. McAdam, *Climate Change, Forced Migration and International Law*, Oxford Press University, 2012.

¹⁰¹ F. Woodworth, "Exclusion of Climate Migrants from the Global Compact on Refugees", *GEOPOLITICS* 2024, VOL. 29, NO. 1, 118–147, doi: <https://doi.org/10.1080/14650045.2023.2225242> © 2023 Taylor & Francis Group, LLC

coordinated international action to produce a multilateral framework which could encapsulate and regulate such situations became apparent, and urgent. On the 19th of September of 2016, the UN General Assembly High-Level Plenary Summit on Refugees and Migrants adopted the New York Declaration on Refugees and Migrants, with the intent of asserting global cooperation on international migration challenges, as well as ensuring more predictable and equitable burden sharing responsibility among member States¹⁰².

As a result of the New York declaration and through the joint work of the UNHCR, hundreds of NGOs and civil society in a two-years work of consultations, two frameworks were developed in 2018: the Global Compact for Safe, Orderly and Regular Migration (GCM) and the Global Compact on Refugees (GCR)¹⁰³. The GCM focuses on creating safe, orderly, and regular migration pathways, protecting the rights of migrants, and fostering international cooperation on migration governance; while the GCR specifically addresses the needs of refugees, and how to improve the international response to large-scale refugee movements and protracted refugee situations. For the purpose of my research, I will be analyzing selected articles of the Global Compact on Refugees, as this is the designated legal foundation to address forcibly displaced individuals' needs and requirements.

The Global Compact on Refugees has four key objectives: (1) ease the pressure on host countries; (2) enhance refugee self-reliance; (3) expand access to third-country solutions and (4) support conditions in countries of origin for return in safety and dignity. The structure that was envisioned comprised of four main sections: the Introduction, which outlines background, guiding principles, and key objectives of the compact; the Comprehensive Refugee Response Framework (CRRF), as agreed in Annex I of the New York Declaration; the Programme of Action, which details specific measures to achieve the compact's objectives, such as burden and responsibility sharing commitments, or how to functionally support different stages of the asylum seeking process; and finally the Follow Up and Review Arrangements, which monitor and review periodically the progress towards the achievement of the Compact's targets.

¹⁰²UNHCR, <https://www.unhcr.org/about-unhcr/overview/global-compact-refugees>

¹⁰³ *ibid.*

It is important to reinforce that the GCR is not legally binding for States, as it says in paragraph 1(A) of the document. However, *“it represents the political will and ambition of the international community as a whole for strengthened cooperation and solidarity with refugees and affected host countries”*.¹⁰⁴ Unfortunately, this also means that the provisions that are enclosed in the Compact are dependent on the voluntary contributions *“(that) will be determined by each State and relevant stakeholder, taking into account their national realities, capacities and levels of development, and respecting national policies and priorities”*.¹⁰⁵

The decision to make the Global Compact non-legally binding and to rely on the voluntary initiative of States is certainly meant to honor the principle of State sovereignty, deferring to national laws and hoping for the conformation and integration of GCR provisions to national ones. However, the high degree of flexibility and adaptability has its downsides. Indeed, this stand might lead to a lack of consistency in the implementation of refugee protection measures across different countries. While some States may make significant commitments, others may contribute minimally, ultimately creating an imbalance in the implementation of the fair burden sharing among States, which represents one of the core pillars of the Compact. While the possibility to let States decide which approach is best to deal with refugee flows within their national borders, this also determines less predictability and uniformity in the protection offered to refugees. Refugees might experience different levels of support depending on where they are and the policies of the host country, without a standardized and clear approach for their treatment.

If the level of protection is unstable for categories of individuals who fall within the canons of the refugee definition as established by the 1951 Convention, it is even more serious for climate refugees. In section D, paragraph 8 of the Introduction to the GCR there is the first mentioning of environmental concerns regarding refugee conditions:

“8. Large-scale refugee movements and protracted refugee situations persist around the world. Protecting and caring for refugees is life-saving for the individuals involved and

¹⁰⁴ United Nations General Assembly, *Global Compact on Refugees*, A/RES/73/151, 17 December 2018, available at: <https://www.unhcr.org/media/global-compact-refugees-booklet> (last accessed: 09/08/2024)

¹⁰⁵ Ibid.

an investment in the future, but importantly needs to be accompanied by dedicated efforts to address root causes. While not in themselves causes of refugee movements, climate, environmental degradation and natural disasters increasingly interact with the drivers of refugee movements. In the first instance, addressing root causes is the responsibility of countries at the origin of refugee movements. However, averting and resolving large refugee situations are also matters of serious concern to the international community as a whole, requiring early efforts to address their drivers and triggers, as well as improved cooperation among political, humanitarian, development and peace actors."¹⁰⁶

While the GCR is not the first document to acknowledge environmental degradation as a driver of migration, it is significant because it reflects a broad international consensus and integrates this understanding into a comprehensive framework for refugee protection. This extract highlights the interaction of environmental issues with traditional social and political drivers of forced displacement of people, and it states that such concerns must be taken into consideration when evaluating the case of an asylum seeker. The provision also emphasizes the importance of addressing root causes when tackling migration issues, which are conceived to be the primary responsibility of the country of origin. This sentence entails numerous problems for climate refugees: the responsibility of the country of origin to prevent the existence of refugee patterns is certainly desirable, but it is a nonsense in the very conception of the refugee category that is based on the State's inability to provide for the protection of the human rights of its citizens, if not being the one who's actively denying them rights and performing persecutory acts against certain individuals. Furthermore, even if there is a share of climate-induced displacement happening within the country's borders, it is crucial to highlight that often the countries of origin of climate refugees are the ones that are the most impacted by the effects of climate change, thus it is very challenging for them to provide the essential adequate resources to address its impacts. Probably acknowledging these challenges, the paragraph proceeds to stress the importance of global cooperation in providing a coordinated response towards such issues, advocating for a holistic approach which doesn't just provide emergency humanitarian aid, but can also develop long-term sustainable solutions for the individuals involved.

¹⁰⁶ United Nations, <https://www.unhcr.org/media/global-compact-refugees-booklet>

The second and last mention to environmental issues in the GCR is at paragraph 12 of the Part II of the Compact, the section that is called “Comprehensive Refugee Response Framework” (CRRF), hereafter reported:

“12. While the CRRF relates specifically to large refugee situations, population movements are not necessarily homogeneous, and may be of a composite character. Some may be large movements involving both refugees and others on the move; other situations may involve refugees and internally displaced persons; and, in certain situations, external forced displacement may result from sudden-onset natural disasters and environmental degradation. These situations present complex challenges for affected States, which may seek support from the international community to address them. (...)”

¹⁰⁷

This provision highlights how forcibly displaced movements of individuals are not homogenous, and that they can be particularly affected by sudden extreme climate events or environmental degradation. In this paragraph it is reinforced, ultimately, the need for a collective effort of the whole international community to take responsibility for managing refugee flows, as well as providing support to countries affected by particular situations (including extreme environmental impacts) from which these individuals are forced to flee.

As seen, throughout the Compact there are hesitant mentions of the impact of climate change effects on refugee conditions, however, the emerging position is that they are acknowledged in their existence as threat multipliers, but not recognized as a direct determinant cause for forced displacement. As the GCR “*represents the political will and ambition of the international community*”, it is clear that global actors have no intention to include climate refugees in the traditional definition of refugees, at least in the short term.

This position was confirmed through the statements of different State actors which participated to the negotiations process of the Compact: several of them, such as Italy or Brazil, stated that they were acknowledging the interaction between climate change and migration, however they were not accepting climate change to be listed as one of the root

¹⁰⁷ *ibid.*

causes of refugee movements.¹⁰⁸ These allegations were interpreted through a critical lens by some scholars, who accused such State actors of deliberately wanting to exclude climate refugees from the GCR, accusing them of pursuing geopolitical strategies based on populism, de-responsibility and increased securitization in the field of interstate migration.

Despite linking climate change to forced displacement continues to be a complicated challenge, there is no denying its interference in displacement patterns. Even the UNHCR has acknowledged that climate change can lead to human rights violations that might amount to persecution under the 1951 Convention.¹⁰⁹

The GCR is criticized as it is perpetuating the lack of legal rights and a comprehensive framework for cross-border climate migrants, since it leans on the outdated definition of the 1951 Refugee Convention, which is no longer able to address all the realities of contemporary displacement. Competent agencies such as the UN, UNHCR or IOM need to address these issues from a humanitarian point of view in providing a holistic approach which could include the multicausality of people displaced by climate change induced effects, going beyond the traditional drivers of migration and highlighting historical and ongoing injustices.

Given the political and juridical complexities of reforming existing refugee laws, some scholars suggest that interim solutions could be found in regional agreements and soft law instruments. These are considered to be less politically contentious and easier to negotiate and implement as they address specific territorial challenges, as a consequence they could effectively provide some protection to people that are displaced due to climate change-related events.

2.2 Review of existing regional legal instruments protecting refugees

Currently there are no binding regional legal instruments specifically dedicated to climate refugees, however certain regional frameworks and agreements could provide protections

¹⁰⁸ Supra note (27)

¹⁰⁹ Supra note (27)

for people that are forcibly displaced by environmental factors, including the ones dictated by climate change. Indeed, regional tools can have several advantages in addressing country-specific issues, e.g. they take into consideration local cultural, political and legal contexts, leading to more targeted and durable solutions. At the same time, they can be useful in strengthening local capacity in managing climate-induced displacement, by bringing together local communities and stakeholders. In addition to these motives, regional frameworks usually have simpler and faster amendment procedures than the ones reserved to global international legal tools. This allows them to be able to respond to evolving regional issues regarding environmental refugees through a more targeted and immediate response.

In this subparagraph I will discuss some regional protection frameworks, both binding and not binding, that were developed in different regions of the world in order to find a more targeted answer to the issue of refugees. I will include how these documents have tried (or not) to expand the traditional definition of refugee provided by the 1951 Geneva Convention, fostering a degree of innovation for their respective regional protection systems, and on the other hand I will cover their limitations in correctly addressing the needs of climate refugees in their respective regions.

2.2.1 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1974)

The OAU Refugee Convention is a binding legal document which was adopted on September 10, 1969, and it came into force on June 20, 1974. It has been signed by 46 States and ratified by 41 States. The OAU Convention has been defined as “*the most promising of the regional accords*”¹¹⁰, since it expanded the traditional definition of refugee enclosed in the Geneva Convention of 1951.

“The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of

¹¹⁰ Aa Jaldi and A. El Ouassif, *Climate Refugees: A Major Challenge of International Community and Africa* (Research Paper, June 2022)

habitual residence in order to seek refuge in another place outside his country of origin or nationality.”¹¹¹

The addition of the criteria “*events seriously disturbing public order*” is of extreme innovative importance, as this definition could be suitable for people that are fleeing climate-induced impacts and extreme weather events, including climate refugees. Even if the recognition is not immediate on such grounds, as the monitoring body necessitates further clarifications, this expansion represents a consistent progress from the immobility of the criteria presented in the refugee definition of the 1951 Refugee Convention¹¹². This criterion was, indeed, used by some states in the Horn of Africa following the 2011-2012 droughts which translated into the forced displacement of some individuals to Somalia.¹¹³

The other provisions that are enclosed in the Convention are similar to the ones that are in the 1951 Geneva Refugee Convention, especially the principle of *non-refoulement* (Article II), as well as the one of *non-discrimination* (Article IV).

The principle of non-refoulement is mentioned at Article II (3), in the section “Asylum”:
“3. No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2”.¹¹⁴

The phrasing of this article denotes the broadening of the definition through the OAU Refugee Convention’s provisions: while in the Refugee Convention of 1951 this article is addressed to the category of “refugees”, as defined by the Convention itself, in the OAU Refugee Convention the nomenclature used is “person”. This wording denotes a greater openness aimed at including greater numbers of people under the refugee category, itself already expanded with the new criteria listed above. It also demonstrates

¹¹¹ Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa* (adopted 10 September 1969, entered into force 20 June 1974) 1001 UNTS 45, available at: https://au.int/sites/default/files/treaties/36400-treaty-36400-treaty-oau_convention_1963.pdf (last accessed: 11/08/2024)

¹¹² Supra note (31)

¹¹³ E Ferris & J Bergmann ‘*Soft law, migration and climate change governance*’, 8 *Journal of Human Rights and the Environment* 6-29, (2017)

¹¹⁴ Supra note (37)

a strong grounding of the Convention in human rights law, which sees this provision as a right applicable to all persons potentially exposed to these dangers in their homelands. Even those that are threatened by climate degradation.

The article which encloses the principle of non-discrimination is the fifth, which recites as follows:

*“Member States undertake to apply the provisions of this Convention to all refugees without discrimination as to race, religion, nationality, membership of a particular social group or political opinions.”*¹¹⁵

Compared with the corresponding article on the principle of non-discrimination in Article 4 of the 1951 Refugee Convention, non-discrimination on the grounds of political opinion and social group membership is also included in this one. This expansion is essential to include more individuals, potentially including those displaced by the effects of climate change.

However, the application of the OAU Refugee Convention could bring some challenges. Even if individuals met the expanded refugee definition under the Convention, this wouldn't automatically guarantee that they will be granted asylum or receive essential social services. In fact, in Article II (1) the Convention stipulates that:

*“Member States of the OAU shall use their best endeavors consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.”*¹¹⁶

This provision means that the compatibility with the Convention's criteria is still dependent on the political will and domestic policies of individual African nations. In addition to this, the Convention doesn't explicitly list essential services such as medical treatment, food, education, housing, and any other social service that the refugee would need to adapt to their new life in the host State, leaving the provision of such services to the discretion of the host State.¹¹⁷ Ultimately, the Convention is valid only for the African

¹¹⁵ Supra note (37)

¹¹⁶ Supra note (37)

¹¹⁷ Supra note (31)

States that ratified it and within their territories, without an international recognition of such principles, and also the Convention does not have a monitoring mechanism and has hardly been applied to respond to the situations of climate refugees.¹¹⁸

In conclusion, the complications in providing a clear and transparent legal status for climate refugees that match the requirements of the Refugee Convention of 1951 (on which the OAU Convention is based) still stand.¹¹⁹

2.2.2 Cartagena Declaration on Refugees (1984)

The Cartagena Declaration is not a binding legal document; however, it has been incorporated into national legislation in many Latin American countries, giving it binding force in domestic contexts.

The Cartagena Declaration was adopted on November 22, 1984, following a consistent increment of refugees and internally displaced persons in Latin America due to increasing political violence and conflict, particularly in Central America, which led to numerous violations of human rights all over the region. The high-volume of forced migrants determined social and economic challenges for the seven countries of Central America, which responded with more and more restrictive policies. Meanwhile, there was a relevant legal debate in the region: despite the broad consensus on the necessity to recognize and protect the human rights of asylum seekers in the region, which were captured by customary law and Article 22(8) of the 1969 American Convention on Human Rights, there was the compelling necessity to understand how to clearly define their legal status.¹²⁰

Until the mid-1970s, countries in the region were largely content with the existing political asylum system and did not experience the moral and material pressures that typically drive systemic change. During this period efforts were concentrated in ensuring

¹¹⁸ Supra note (31)

¹¹⁹ Supra note (31)

¹²⁰ J. H. Fischel de Andrade, *The 1984 Cartagena Declaration: A Critical Review of Some Aspects of Its Emergence and Relevance*, Refugee Survey Quarterly, Volume 38, Issue 4, December 2019, Pages 341–362, doi:<https://doi.org/10.1093/rsq/hdz012> (last accessed: 12/08/2024)

the adherence to principles enclosed in the 1954 Caracas Conventions on Territorial and Diplomatic Asylum and the 1951 Refugee Convention (as well as its Protocol of 1967), including the observation of principles such as non-refoulement and facilitating resettlement for those in need of protection.¹²¹ With the emergency-type situation that developed during the 1975-1985 with refugee flows, the need for a regime change became impossible to postpone.

An important change which was brought with the Declaration regards the broadening of the traditional refugee definition, similar to the ones that had been adopted through the OAU Refugee Convention ten years prior. In section III paragraph 3 it states as follow:

*3. "TO REITERATE that, in view of the experience gained from the massive flows of refugees in the Central American area, it is necessary to consider enlarging the concept of a refugee, bearing in mind, as far as appropriate and in the light of the situation prevailing in the region, the precedent of the OAU Convention (article 1, paragraph 2) and the doctrine employed in the reports of the Inter-American Commission on Human Rights. Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees' persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order".*¹²²

There were some key innovative features that were added to the definition depicted in the Declaration: starting with the recognition of the fact that refugees may flee not only due to specific persecution, but also because of the threat of *generalized violence*. This stance is particularly relevant as it can include situations where widespread violence affects entire populations, and not just specific groups and targeted individuals. *Foreign aggression and internal conflicts* expressions reinforce the fact that individuals that are forced to flee from foreign aggressions or internal conflicts could be encountered in a situation of widespread insecurity that necessitates protection. Ultimately, the *massive*

¹²¹ supra note (39)

¹²² Cartagena Declaration on Refugees, Nov.22 1984, Section III (3), available at: <https://www.unhcr.org/media/cartagena-declaration-refugees-adopted-colloquium-international-protection-refugees-central> (last accessed: 12/08/2024)

violation of human rights or other circumstances which have seriously disturbed public order expressions indicate that severe and systematic abuses can create conditions that force people to seek refuge, as well as any other situations where the occurrence of widespread disorder makes it impossible for people to live safely.¹²³ The broadening of the refugee definition to include such provisions is of groundbreaking innovation, and it could be potentially very useful for climate refugees: the recognition of generalized insecurity and massive violations of human rights which could have consequences on public order are criteria where climate-induced displacement could actually fit. By acknowledging a range of factors beyond traditional persecution, the Cartagena Declaration provides a precedent for recognizing and addressing new forms of forced displacements, including those that are driven by climate change impacts. The strong humanitarian approach of the Declaration is reinforced in paragraph of Section III:

“T O C O N F I R M the peaceful, non-political and exclusively humanitarian nature of grant of asylum or recognition of the status of refugee and to underline the importance of the internationally accepted principle that nothing in either shall be interpreted as an unfriendly act towards the country of origin of refugees.”¹²⁴

These innovations could serve as a model to develop analogue regional frameworks, which could eventually scale up into the creation of international documents addressing climate-induced displacement.

Despite all the potentialities to be achieved with the broadening of the refugee definition, the implementation of the Declaration comes with multiple challenges. Firstly, its great practical relevance has seriously diminished over time, paradoxically because of its own success. In fact, forced migrants who did not qualify as refugees did not have a clear legal status in the 1980s. By broadening the definition the Declaration had, for sure, allowed new categories to benefit from the protection framework which was granted to refugees by the 1951 Geneva Convention, similar to the work that had been done by the OAU Convention of 1974. On the contrary, in some regional frameworks such as the European Union’s one, the broadening of the definition of refugee did not happen, giving birth to an alternative category of protection, with fewer rights and “temporary” status, to fit the

¹²³ *ibid.*

¹²⁴ *Ibid.*

categories of displaced individuals who did not match the criteria of the 1951 Refugee Convention.¹²⁵

Moreover, the popularity of the Cartagena Declaration translated into the incorporation of its principles in domestic law, ultimately lessening the immediate direct practical relevance of the Declaration as it was already present in domestic contexts. Additionally, as the Declaration does not have direct application, it had to be conformed through national procedures, denying asylum seekers access to a more reliable standardized regional system.

In conclusion, the Cartagena Declaration has certainly paved the way for progressive developments in refugee law within the region. However, it has not been universally adopted or harmonized, and the variations in domestic legislation determine the lack of a unified approach towards the recognition and protection of climate refugees.

2.2.3 The Common European Asylum System (CEAS)

Compared to Latin America and Africa, the European Union bears a significant "*over proportional blame*" for climate change, especially since, on the contrary, it has a very low vulnerability towards climate change impacts, including environmentally induced forced displacement.¹²⁶ However, even if the Union does recognize the principle of shared responsibility, the securitization process has been greatly affecting migration policies of the EU. Even if, as of now, there are not specific legal frameworks conceived to address climate refugees' legal status, there are some areas of EU law that could be interpreted to provide protection for people displaced cross-border by natural disasters, including provisions on temporary and subsidiary protection.

The harmonization of asylum processes across Member States is monitored through the Common European Asylum System, a comprehensive framework of shared laws and

¹²⁵ UN High Commissioner for Refugees (UNHCR), *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*, 1 October 2020

¹²⁶ A. Fellendorf and D. Immer, *The European Union's Responsibility to Protect Environmentally Displaced People and Their Position in the Common European Asylum System* (Research Paper, University of Groningen, May 2014), pag 16

procedures. Among its key components: *the Dublin Regulation*, to address the issue of state-responsibility for the process of asylum applications across the Union; the *EURODAC System*, to store data and fingerprints of asylum applicants; the *Qualification Directive*, charged with the definition of the criteria for qualifying for international protection, as well as rights and benefits of those who qualify as refugee; the *Asylum Procedure Directive*, which sets out the procedures and standards for granting and withdrawing international protection; the *Reception Conditions Directive*, which establishes minimum rights standards for the reception of asylum seekers; and the *Temporary Protection Directive*, designed to provide immediate protection to displaced individuals from third countries who are unable to return to their country of origin, particularly whether a consistent flow of individuals should arrive.¹²⁷

One of the primary legal foundations for the CEAS is the Lisbon Treaty of 2007, which asserts that:

*"The Union shall develop a common policy on asylum, subsidiary protection, and temporary protection, aiming to provide appropriate status to any third-country national requiring international protection, while ensuring adherence to the principle of non-refoulement."*¹²⁸

This principle prohibits the return of individuals to a country where they may face serious violation of their human rights. This general definition would be plenty useful to grant regional protection to environmental refugees, however, European law must conform to the provisions enclosed in the Refugee Convention of 1951, as stated in article I of the Qualification Directive:

"(definition) 'refugee' means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual

¹²⁷ European Commission, https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en

¹²⁸ Treaty on the Functioning of the European Union (TFEU), Article 78(1), 2012.

residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;"¹²⁹

The provided definition of refugee incorporates the criteria used by the 1951 Refugee Convention, without expanding it to additional categories, like the OAU Convention or the Cartagena Declaration.

In Chapter III, Article 9 and 10 of the Qualification Directive, it's enclosed the description of the acts of persecution and the reasons behind them which could qualify a person as a refugee according to EU law:

"1. In order to be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention, an act must: (a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in point.

*2. Acts of persecution as qualified in paragraph 1 can, inter alia, take the form of: (a) acts of physical or mental violence, including acts of sexual violence; (b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner; (c) prosecution or punishment which is disproportionate or discriminatory; (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment; (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion as set out in Article 12(2); (f) acts of a gender-specific or child-specific nature."*¹³⁰

¹²⁹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (Recast Qualification Directive), Article 2(d).

¹³⁰ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (Recast Qualification Directive), Article 9.

In this article the forms in which acts of persecution may be accepted under the provisions of the Directive, are to be intended within the boundaries of Article 1(A) of the 1951 Refugee Convention. The acts of persecution indicated as a serious violation of human rights could be interpreted in favor of individuals displaced by the effects of climate change, however with the obligation to demonstrate that their essential rights are being violated in their homeland and consequently forced to flee.

Whereas environmentally displaced individuals cannot be protected as “refugees” in the strict sense because of the legal phrasing of the 1951 Convention, subsidiary protection allows for complementary measures. In fact, the Qualification Directive provides a subsidiary layer of protection for those individuals “*who would suffer serious harm*” in case of return to their home countries.

To this extent, it’s worth discussing the Temporary Protection Directive (TPD): an EU procedure developed to deal with ‘mass influxes’ of displaced persons, granting them limited subsidiary protection.¹³¹ People who can qualify to benefit from these provisions are “*persons at serious risk of [...] generalized violations of their human rights.*”¹³² Thus, even though it is not explicitly stated anywhere in the Directive, climate refugees could potentially qualify for this complementary protection, if they cannot access traditional asylum procedures. However, there are some challenges to take into considerations: the application of the provisions could not be possible for climate refugees who do not arrive in mass influxes, as the measure was not designed to address singular cases nor it is suitable for those displaced by progressive environmental degradation (rather for an emergency-type situation, considering it also has a time bound of three years before repatriation). Ultimately, the TPD is also subject to a high political threshold through the European Council and Commission, making it difficult to activate and apply.¹³³

¹³¹ Amanda Tedenljung, *Climate Change and Forced Migration: How Climate Refugees Fit into EU Asylum Law* (Master's Thesis, Uppsala University, Department of Theology, 2020) supervised by Patrik Bremdal.

¹³² Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving Such Persons and Bearing the Consequences Thereof, OJ L 212, 7.8.2001, p. 12–23, Art. 2(c).

¹³³ C. van Duren, *The Legal Obligations for the European Union to Protect Climate-Induced Migrants Crossing European Borders*, Master’s Thesis, Tilburg University, June 2018.

Moving on to the other components of the CEAS, the Return Directive is the one charged with the repatriation measures for illegal immigrants. At Article 9(1,2) of the Directive are listed the reasons allowed to postpone forced return:

1. Member States shall postpone removal: (a) when it would violate the principle of non-refoulement, or (b) for as long as a suspensory effect is granted in accordance with Article 13(2).

*2. Member States may postpone removal for an appropriate period taking into account the specific circumstances of the individual case. Member States shall in particular take into account: (a) the third-country national's physical state or mental capacity; (b) technical reasons, such as lack of transport capacity, or failure of the removal due to lack of identification.*¹³⁴

Therefore, even if climate-related reasons are not listed, these provisions allow national authorities some discretion to grant climate refugees more favorable conditions. However, a significant limitation remains: the displaced individuals must already be present physically within the European Union to benefit from this provision.¹³⁵

Directive 2013/33/EU of the European Parliament and the Council (or Reception Condition Directive) establishes common standards for the reception of applicants for international protection. This directive is of little relevance for the cause of climate refugees, as it addresses issues such as healthcare, employment and conditions of detentions. The only useful provisions would be the one referring to “vulnerable people” (Chapter IV), who are defined as individuals “*who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation, in the national law implementing this Directive*”¹³⁶The

¹³⁴ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Article 9, OJ L 348, 24.12.2008, p. 98–107.

¹³⁵ Supra note (59)

¹³⁶ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Article 21 and Article 22, OJ L 180, 29.6.2013, p. 96–116.

correlation with climate refugees which could be claimed here is if individuals who have suffered from environmental disasters should be included within this category.

Finally, the Dublin Regulation, a fundamental legal tool responsible to regulate the responsibility-sharing of processing asylum-seeking claims all over the European Union, is to be taken into account. In the context of environmentally induced migration, the Dublin Regulation is particularly relevant because certain Member States do provide some sort of national temporary protection to climate refugees (such as Italy, Finland, Sweden and Cyprus), thus, climate refugees could gain greater protection if they applied to such countries.¹³⁷

The example of the Italian case is particularly relevant to the expansion of the legal framework for encompassing the human rights of climate refugees. The case in question involved a claimant from the Niger Delta, who had fled environmental degradation (“*dissesto ambientale*”)¹³⁸ which characterized his home area. His request for humanitarian protection had been denied by both the Territorial Commission and the Tribunal, which failed to consider the influence of severe environmental degradation present in the Niger Delta, in the violation of the claimant’s fundamental rights under Italian law. The case was brought upon the Corte di Cassazione, which drew on the decision of the Human Rights Committee on *Ioane Teitiota v. New Zealand*. Even though Teitiota’s claim was eventually rejected, it acknowledged that States are obliged to protect individuals’ right to life from foreseeable threats, including environmental degradation and climate change¹³⁹. The Corte di Cassazione emphasized that environmental degradation, much like armed conflict, can result in conditions that fall below the essential minimum required to ensure a dignified life¹⁴⁰. This recognition is vital, as it expands the concept of “*inhuman or degrading treatment*” to include environmental factors, thereby setting a legal precedent for addressing climate refugees within the framework of humanitarian protection.¹⁴¹

¹³⁷ Supra note (59)

¹³⁸ Corte di Cassazione, Ordinanza n. 5022, 24 February 2021, pag. 2.

¹³⁹ UN Human Rights Committee, *Views adopted on Teitiota Communication*, Communication No. 2728/2016, CCPR/C/127/D/2728/2016, 2015

¹⁴⁰ Supra note (67)

¹⁴¹ F. Perrini, *Il riconoscimento della protezione umanitaria in caso di disastri ambientali nel recente orientamento della Corte di Cassazione*, *Ordine Internazionale e Diritti Umani*, 2, pp. 349-362, 2021

Despite these developments in national case law, the absence of a homogenous coordinated approach within the EU could generate great disparities between different national reception systems. It could determine the exhaustion of the resources and accommodation capacity of particular countries, and eventually undermine the CEAS' unifying and standardizing goal for all the Member States of the EU.

In conclusion, it is shown in this subparagraph how the CEAS does not represent an adequate legal instrument for the protection of climate refugees' rights. While the EU has partly recognized the issue, it has so far failed to establish an adequate protection framework for environmentally induced displacement.

2.3 International Human Rights Law and Customary Law for climate refugees

If, as the UN articulates, all rights are universal, interrelated and indivisible, then all individuals, no matter who they are or where they come from, should be entitled to enjoy the basic rights recognized under international human rights law¹⁴². This is particularly true when the strong bond which ties the environment and human rights is acknowledged: many civil, political, cultural and economic rights are sensitive to environmental degradation, and at the same time environmental protection is starting to depend upon the protection of human rights law.¹⁴³

Human rights law is a body of international, regional, and domestic laws that protect the fundamental unbreakable rights and freedoms of individuals and groups. Human rights law is grounded in key international treaties, declarations, and conventions, and it is enforced through various international bodies and domestic legal systems, in order to grant the possibility for individuals to live with dignity, freedom and peace.

Since international law is an integrated system where different branches influence one another, human rights law often overlaps and interacts with refugee law as well. Indeed,

¹⁴² S. Atapattu, *Climate change and displacement: protecting 'climate refugees' within a framework of justice and human rights*, *Journal of Human Rights and the Environment*, Vol. 11 No. 1, March 2020, pp. 86–113

¹⁴³ T.T.V. Duong, *WHEN ISLANDS DROWN: THE PLIGHT OF "CLIMATE CHANGE REFUGEES" AND RECOURSE TO INTERNATIONAL HUMAN RIGHTS LAW*, Penn Carey Law: Legal Scholarship Repository, 2014

many of the rights and protections provided under refugee law are based on broader principles found in human rights law, which is also a fundamental interpretation tool.

There are three main reasons why international human rights law is fundamental for the protection of climate refugees. First, human rights law can set out minimum standards of treatment for States to observe and grant for persons within their jurisdiction. Moreover, it can offer a threshold to understand which rights are compromised by environmental degradation, and which national authority should be in charge of responding to such violations of rights, putting emphasis on the accountability of the State to uphold human rights¹⁴⁴. The second reason concerns the possibility of having a procedural legal basis in the event of a human rights violation in a certain State, ensuring the opportunity to seek (and eventually obtain) complementary protection of one's human rights in another State. Thirdly, if a relocation was to take place, human rights law guarantees minimum standards of treatment that must be observed by the receiving State, and which prove crucial in defining the legal status that is granted to the displaced person.¹⁴⁵ Human rights law has the possibility to expand the traditional definition of "refugee" enclosed in international and regional bodies, to include individuals who are at risk of arbitrary deprivation of their right to life, their right not to be subject to torture, discrimination, or cruel, inhuman or degrading treatment or punishment.¹⁴⁶

Examples of legal instruments that makes part to international human rights law are the *International Covenant on Civil and Political Rights (ICCPR, 1966)*, the *International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)*, or the *Universal Declaration of Human Rights (UDHR, 1948)*.

Human rights law also partly overlaps with customary international law, which consists of norms that have become binding for the whole international community through general, uniform and consistent practice, and the shared belief that States are legally obliged to comply with such principles. Customs are crucial practices for climate

¹⁴⁴ *ibid.*

¹⁴⁵ *Ibid.*

¹⁴⁶ J. McAdams, *Climate Change, Forced Migration, and International Law* (Oxford, 2012; online edn, Oxford Academic, 24 May 2012), <https://doi.org/10.1093/acprof:oso/9780199587087.001.0001>, last accessed on the 14 Aug. 2024

refugees, as they can be enforced to the whole international community without the need to have a ratified convention binding them with the obligation.

In this paragraph I will be focusing on some principles which have been incorporated into international human rights law, and, at the same time, have customary status. The key human rights principles which I will be assessing could represent a relevant legal ground to base the claims of non-removal that are brought by climate refugees who crossed internationally recognized borders in order to seek relief.

A) The right to life

The first principle taken into consideration is the right to life, protected under Article 3 of the Universal Declaration of Human Rights (UDHR),

"Everyone has the right to life, liberty and security of person."¹⁴⁷

Article 6 of the International Covenant on Civil and Political Rights (ICCPR),

"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."¹⁴⁸

Plus, this principle is also present in every other regional human rights framework. The United Nations (UN) Human Rights Committee described it as the “supreme right”¹⁴⁹, which is essential to all human rights. It cannot be subjected to derogations by States on the basis of the ICCPR, and it is recognized as entailing a non-refoulement obligation.

The right to life is indeed closely connected to a whole set of rights conceived for the wellbeing of the person, the right to an adequate standard of living (Article 25 of the Universal Declaration of Human Rights), is one example:

¹⁴⁷ United Nations General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Article 3.

¹⁴⁸ Universal Declaration of Human Rights, Art. 3; International Covenant on Civil and Political Rights, Art. 6.

¹⁴⁹ UN Human Rights Committee, *General Comment No. 36: Article 6: Right to Life*, CCPR/C/GC/36 (30 October 2018), available at: <https://www.refworld.org/docid/5e5e75e04.html>.

*"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control."*¹⁵⁰

This right comprises the *right to food, clothing, housing, and improving of living conditions*, as well as *rights to not be deprived of means of subsistence*, which could also include the possibility of environmental modifications to destroy the ability of people to hunt, fish, gather and provide for their survival.¹⁵¹ Similarly, the ICESCR recognizes the human right to health as the *"right of everyone to the enjoyment of the highest attainable standard of physical and mental health"*¹⁵². The right to life includes the obligations for States to act positively and willingly to find measures to protect it and ensure it for their citizens. For climate refugees, the provision could be applied also for "indirect harm", for example because of a contamination to the environment¹⁵³. On such regard, Professor Jane McAdam (2012)¹⁵⁴ summarized the criteria that are taken into consideration by the Human Rights Committee to manage individual claims of violation of the right to life:¹⁵⁵

- the risk faced by the applicant should be ongoing or imminent, retroactivity is not contemplated;
- The applicant must be personally affected by the harm;
- Environmental contamination with proven long-term health impacts could be considered a sufficient threat, but the claimant should be able to provide solid evidence that contaminants have reached, or will reach soon, the considered human environment.

¹⁵⁰ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71, Article 25 (1948).

¹⁵¹ Supra note (68)

¹⁵² International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316, Article 12 (1966), 993 U.N.T.S. 3.

¹⁵³ Supra note (68)

¹⁵⁴ Supra note (68)

¹⁵⁵ Supra note (72)

- The hypothesis of a threat is not sufficient to constitute a violation of the right to life
- Cases that challenge public policy, in the absence of an actual or imminent risk, will be considered inadmissible.

In 2021, a historic resolution from the Human Rights Council acknowledged the particular importance of the right to a clean, healthy, and sustainable environment as a human right¹⁵⁶. Even if there is not yet an individual or collective “*right to a healthy environment*” in international law, several legal bodies have recognized the inevitable link between the environment and the enjoyment of one's human rights, coming to the conclusion that also environmental degradation turns out to be a violation of one's right to life, home, property and private life.¹⁵⁷

B) Principle of the right to not be subject to Cruel, Inhuman, Degrading Treatment or Punishment

Article 7 of the ICCPR prohibits torture and cruel, inhuman or degrading treatment or punishment:

*"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."*¹⁵⁸

The standard approach of the UN Human Rights Committee on cruel, inhuman, degrading treatment or punishment is to treat these forms of ill-treatment on a hierarchy scale, with torture being the worst of the practice among them all. The UN Human Rights Committee does not possess a list of acts that constitute a form of degrading treatment of people, arguing that the severity of the act itself derives from the nature, purpose and severity of the treatment applied. Therefore, the UN Committee often fails to highlight which parts

¹⁵⁶ United Nations Human Rights Council, Resolution 48/13, *"The human right to a clean, healthy and sustainable environment,"* A/HRC/RES/48/13, 8 October 2021.

¹⁵⁷ Supra note (68)

¹⁵⁸ International Covenant on Civil and Political Rights, Article 7, adopted 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

of the article have been violated, accordingly there is very little jurisprudence from this body about the nature of each type of harm.¹⁵⁹

When it comes to the plight of climate refugees, some scholars have found that forcing individuals to live in conditions of extreme environmental degradation, where basic rights such as right to food, to water, and shelter are denied, could be considered as being subject to inhuman or degrading treatment. This interpretation implies the State's accountability towards the persons under their jurisdiction: if the State fails to grant them protection from the climate hazards generated by environmental degradation (such as rising sea levels, droughts, or extreme weather events), it could represent a violation of the Article 7 of the ICCPR.

Article 7 of the ICCPR has strong foundations in the non-refoulement principle¹⁶⁰, meaning that if the monitoring body found that the asylum seeker has a well-founded fear of being subject to inhuman or degrading treatment if repatriated to its original territory, then it is the mandatory duty of the domestic monitoring body of competence, and in more general terms of the receiving State, to grant asylum or some sort of complementary protection to the affected individual. This article has been cited in 2020 in a case that involved one of the very first claims of a climate refugee: Ioane Teitiota, a citizen of the island of Kiribati. In this case the Court ruled that deporting the claimant back to life-threatening climate conditions in his home country could represent a violation of Article 7, providing that the State could no longer provide basic safety and enjoyment of human rights.¹⁶¹

More in-depth discussion on relevant case law will be treated in the following paragraph.

Under such provisions, there is a shared responsibility coming both from the host country and the home country: the home country is primarily responsible for protecting the basic rights of persons under its jurisdiction, including the right to life and protection from inhuman or degrading treatment. Consequently, the home country must take proactive measures to prevent environmental degradation that threatens survival, such as rising sea levels, droughts, or pollution, which could severely affect access to food, water, and

¹⁵⁹ Supra note (68)

¹⁶⁰ See paragraph 2.1 (*Convention on the Rights of Refugees 1951*)

¹⁶¹ Supra note (68)

shelter. Failure to do so may result in violations of the right to life and dignity, forcing individuals to flee.

The host country also has a duty to consider asylum claims in light of the violation of human rights of people fleeing from climate change impacts. Under the non-refoulement principle, host countries cannot return individuals to a home country where they would face serious harm, even if this is determined from environmental degradation, as it was seen in the case of Italy.¹⁶²

C) Principle of non-refoulement

The principle of non-refoulement, enclosed in article 33 of the 1951 Refugee Convention which was previously mentioned in the paragraph, is the fundamental concept which represents the foundations of all the rights that are granted to individuals seeking for asylum in another State.

The UN Human Rights Committee, the UN Committee on the Rights of the Child, the European Court of Human Rights (ECHR), the UN Committee on the Elimination of Racial Discrimination, have all acknowledged that the principle of non-refoulement may extend beyond the protection of the right to life (Article 6 of the ICCPR, Article 2 of the ECHR) and the right to be free from torture or cruel, inhuman, or degrading treatment or punishment (Article 7 of the ICCPR, Article 3 of the ECHR, Article 37 of the CRC)¹⁶³. The Committee on the Rights of the Child has clarified that the obligation of non-refoulement must be granted by States anytime that there is a real risk of "*irreparable harm*" if the person is removed from the host territory and repatriated. The UN

¹⁶² Supra note (67)

¹⁶³ Human Rights Committee, *General Comment No. 31 (2004) on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (CCPR/C/21/Rev.1/Add.13, para. 12); Committee on the Rights of the Child, *General Comment No. 6 (2005) on Treatment of Unaccompanied and Separated Children Outside their Country of Origin* (CRC/GC/2005/6, para. 27); European Court of Human Rights, *Sufi and Elmi v. the United Kingdom*, Applications Nos. 8319/07 and 11449/07, Judgment of 28 June 2011, para. 282, European Court of Human Rights, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, Judgment of 21 January 2011, para. 263; UN Committee on the Elimination of Racial Discrimination (CERD), *General Recommendation No. 30 (2004) on Discrimination Against Non-Citizens*, para. 27, CERD/C/64/Misc.11/rev.3.

Committee's given definition of irreparable harm is consistent with the human rights violations reported in Articles 6 and 7 of the ICCPR.¹⁶⁴

Other than articles 6 and 7 of the ICCPR (the violation of which triggers the application of the principle of non-refoulement), no other customs or provisions from human rights law have been used to raise a claim of non-removal.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) has traditionally been viewed as less relevant to asylum claims compared to the International Covenant on Civil and Political Rights (ICCPR), and it is no exception for climate-related displacement. This interpretation is mostly because the implementation of its principles is conceived as related to progressive development based on the State's resources. However, this view is contested as some of the ICCPR principles are immediately binding, and even those which are not, the State still must provide minimum essential levels of rights and non-discrimination. While the ICESCR presented limitations on such regard, recent developments are promising for addressing the human rights concerns of climate refugees and holding States accountable for violations related to economic, social, and cultural rights. Historically, demonstrating violations of ICESCR principles has been more challenging compared to its ICCPR counterpart, primarily due to the difficulty in showing specific and individual breaches of these economic and social rights. However, when the Optional Protocol to the ICESCR entered into force in 2013, it established the possibility for State parties to the Protocol to access a formal mechanism to lodge individual complaints regarding violations of their economic, social, and cultural rights before the Committee on Economic, Social and Cultural Rights.¹⁶⁵

In such regard, article 11 (*the right to an adequate standard of living, including adequate food, clothing, and housing*), and Article 12 (*the right to the highest attainable standard of physical and mental health*) could be particularly relevant to detect rights violations for climate refugees.

¹⁶⁴ Supra note (68)

¹⁶⁵ UN General Assembly, *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, sixty-third session of the General Assembly by resolution A/RES/63/117, adopted on the 10/12/2008

2.4 Precedent case law

Precedent case law plays a fundamental role in shaping the legal framework for climate refugees. As the recognition of their legal status is still a work in progress, precedent case law facilitates the path towards a clearer definition, and at the same time judicial decisions establish precedents that shape how future cases are adjudicated. If courts recognize climate change as a factor in asylum claims, it can influence the acceptance of such claims and lead to more inclusive and progressive interpretations of refugee law. Moreover, case law can expand the current provisions of existing international law and eventually fill the gaps which exist for the vulnerable category of climate refugees.

Case law is of particular importance also because it has the ability to raise and spread awareness of a certain matter, especially one of very recent interest such as the one of climate-change and its related impacts, eventually shaping public interest and fostering policy discussions.

In this subparagraph I will be discussing two crucial cases which draw attention on the plight of climate-induced forced displacement: the case of *Ioane Teitiota v. New Zealand* (2015) and the case of *Daniel Billy et al. v. Australia*, also known as the Torres Strait Islanders case (2020).

The choice of these cases is motivated by the topic of the last chapter, where I will be discussing the case study of Small Pacific Islands. Particularly I will examine how they are framed within New Zealand's national policies dealing with climate-induced migration.

2.4.1 *Ioane Teitiota v. New Zealand* (2015)

This case is described as a “landmark determination” and a “historic case”, as it represented the first claim coming from a person which was, according to his assertion, forcibly displaced by the effects of environmental degradation.

The case was brought up by Ioane Teitiota, a citizen originally from the small-island State of Kiribati located in the central Pacific Ocean, and settled specifically in the area of South Tarawa. In the past 30 years, the territory of Kiribati has had experienced rapid population growth, uncontrolled urbanization and limited infrastructure development, affecting particularly the health sector. These factors had inevitably been exacerbated by some serious climate-related events: both sudden-onset environmental events (e.g., storms) and slow-onset processes (such as sea-level rise and coastal erosion processes).¹⁶⁶

Due to these environmental complications, Teitiota and his wife migrated to New Zealand in 2007 and remained there after their visa expired in October 2010. During this time frame they had three children who, despite being born in New Zealand, could not have access to citizenship because of the legal status of their parents. In May 2012 Ioane Teitiota applied for refugee status under section 129 of the *Immigration Act 2009* and/or protected person status under section 13120, claiming that his decision to leave Kiribati was compelling due to the life-threatening situations that he and his family were facing due to the rising of sea-levels determined by climate change. His initial application was denied by the Refugee and Protection Officer. Subsequent appeals to the Immigration and Protection Tribunal and the High Court were also unsuccessful. The courts determined that Mr. Teitiota did not meet the legal criteria for refugee status under either the Refugee Convention or the ICCPR. He attempted to appeal on 6 questions of law to the High Court, and later to the Court of Appeal, but his claims were recognized as insufficient.¹⁶⁷

The claimant proposed four points to be evaluated from the Supreme Court of New Zealand:

- (a) Whether as a matter of public international law an “environmental refugee” qualifies for protection under art 1A(2) of the Refugee Convention.
- (b) Whether, in the alternative, the manner in which art 1A(2) is incorporated into New Zealand law provides a basis for a broader interpretation of “refugee” in s 129(1) of the Immigration Act.
- (c) Whether the United Nations Convention on the Rights of the Child is relevant to the

¹⁶⁶ E. Sommario, *When climate change and human rights meet: A brief comment on the UN Human Rights Committee’s Teitiota decision*, 2013

¹⁶⁷ *ibid.*

assessment of “harm” for the purposes of the Refugee Convention.
(d) Whether the right to life under the ICCPR includes a right of a people not to be deprived of its means of subsistence.¹⁶⁸

Even if the Court recognized that environmental degradation caused by climate change or extreme weather-related events could potentially create “*a pathway into the 1951 Refugee Convention*”, Mr. Teitiota did not face imminent threats to the enjoyment of his right to life, as challenges were widespread throughout the whole territory of Kiribati. Moreover, the judges did not find that the government of Kiribati was insolvent in taking steps to ensure the protection of its citizens at the most of its resources.¹⁶⁹

Having exhausted domestic remedies, in 2015 Mr. Teitiota presented a complaint before the UN Human Rights Committee. He argued that New Zealand's authorities did not evaluate correctly the threat that he would have been exposed through his repatriation, as deporting him to Kiribati would violate his right to life protected under Article 6 of the ICCPR. He claimed that the severe impacts of climate change, including rising sea levels, land disputes, and water scarcity, created a real and imminent threat to his life.¹⁷⁰

The HRC carefully examined its complaint and, while stating that factors of environmental degradation usually do not classify as actors of persecution within the Refugee Convention, “*no hard and fast rules or presumptions of non-applicability exist*”.¹⁷¹ After a thorough assessment, the Court found no evidence to support the applicant's claim of facing a real risk of persecution. Specifically, the tribunal determined that the applicant had not experienced harm in the past from land disputes and was unlikely to face future violence related to housing or land issues.

Regarding the violation of Article 6 of the ICCPR, the Committee considered that the Mr. Teitiota had sufficiently demonstrated, for the purpose of admissibility, that due to the impact of climate change and associated sea level rise on the habitability of the Republic of Kiribati and on the security situation in the islands, the possibility of violation

¹⁶⁸ *Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment* [2015] NZSC 107 at (11)

¹⁶⁹ *Ioane Teitiota v. New Zealand*, Communication No. 2489/2014, U.N. Doc. CCPR/C/116/D/2489/2014 (2016)

¹⁷⁰ *ibid.*

¹⁷¹ *ibid* (2.8)

of the right to life protected by Article Number 6 of the ICCPR could have been compatible with New Zealand's decision to deport the claimant.¹⁷² The tribunal of the HRC recognized that in previous regional cases it had been established that severe environmental degradation could effectively threaten the enjoyment of the right to life¹⁷³. The Committee acknowledged the precarious living conditions and the challenges that the claimant was subject to due to the impacts of climate change-related events on his territory, however the HRC recognized that these conditions were complicated but not impossible to overcome, and that a margin for State's intervention to bring relief was still possible.¹⁷⁴ For these reasons, in 2020 the HRC ruled that the removal of Mr. Tetiota from New Zealand to be deported back to the Republic of Kiribati, did not violate his right under article 6 (1) of the Covenant.¹⁷⁵

The importance of the case is stark, in fact this is one of the very first instances of an international monitoring body ruling on an issue where the effects of climate change and environmental degradation can infringe on an individual's enjoyment of human rights. However, it has to be underlined that the Committee dealt with the situation following a standard procedure regarding the mechanism of the principle of non-refoulement.¹⁷⁶ The Committee stated that, beside the mandatory existence of solid grounds to demonstrate a well-founded fear of violation of the provisions of the Article, the risk of harm must be personal in nature and not derived merely from general conditions in the receiving state, except in extreme cases. The extreme case example that was brought up by the HRC could exist if the Republic of Kiribati would have been extremely violent and repressive, which was not the case.¹⁷⁷ A critique which was moved to the HRC by some scholars is that each risk factor was assessed independently, eventually proving their scarce relevance on the claimant's case.

¹⁷² Supra note (89)

¹⁷³ *ibid* (9.5, see European Court of Human Rights, *M. Özel and others v. Turkey*, judgment of 17 November 2015, paras. 170, 171 and 200; *Budayeva and others v. Russia*, judgment of 20 March 2008, paras. 128–130, 133 and 159; *Öneryildiz v. Turkey*, judgment of 30 November 2004, paras. 71, 89, 90 and 118.)

¹⁷⁴ Supra note (89)

¹⁷⁵ Supra note (89)

¹⁷⁶ HRC, 'General comment No 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life' (30 October 2018) UN Doc CCPR/C/GC/36

¹⁷⁷ Supra note (83)

If factors had been considered cumulatively, it could have been possible to demonstrate a "real risk of irreparable harm" sufficient to trigger New Zealand's non-refoulement obligations.¹⁷⁸

Alternative legal pathways to this case could have been to put more emphasis on the personal situations of Mr. Teitiota and his wife in Kiribati, as well as the rights of their children who would have been deported to Kiribati as well. Indeed, the HRC had been previously more open to consider socio-economic deprivation in matters of non-refoulement, as it was in the case *Jasin v. Denmark* (2014), where the HRC criticized Denmark for not conducting an individualized assessment of the risks that the author of the complaint and her children would have faced if returned to Italy.¹⁷⁹ In the case of *Teitiota v. New Zealand*, Teitiota's children did not appear in the case file as afflicted subjects, yet the applicant might have had a better chance of success if he had included them, as the Convention on the Right of the Child (CRC) Committee employs a broader and more flexible definition of harm. Particularly, the notion of 'harm' covers persecution, torture, gross violations of human rights, or other irreparable harm. Where irreparable harm has an open interpretation, and may include harm to the survival, development, or health (physical or mental) of the child.¹⁸⁰ However, New Zealand is not a member of the 2011 Optional Protocol to CRC, which grants the Committee on the Rights of the Child the prerogative to receive individual communications.

In conclusion, an important takeaway from the case regards mostly two aspects: firstly, the HRC clarified that a concurring feature of the right to life under Article 7 of the ICCPR is the right to live life with dignity, expanding on the provisions of the Article; secondly, recognized environmental degradation, climate change impacts, and unsustainable development as significant threats to the right to life for both current and future generations.

From the conclusions of the HRC decision it seemed that such a complaint could only be accepted in very serious situations of environmental degradation and extreme violence. However, as pointed out by a dissenting opinion of a member of the HRC, waiting for

¹⁷⁸ *ibid.*

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

high mortality rates or significant violence to meet the risk threshold is counterintuitive to life protection, as conditions could become incompatible with the right to life with dignity before such extreme outcomes are reached.¹⁸¹

2.4.2 *Daniel Billy and others v. Australia*

This case was brought upon the attention of the Human Rights Committee after a group of eight Torres Strait Islanders, Australian nationals, and six of their children submitted a petition against the Australian government. The authors of the petition were Daniel Billy, Ted Billy, Nazareth Faid, Stanley Marama, Yessie Mosby, Keith Pabai, Kabay Tamu and Nazareth Warria, stationed on the islands of Boigu, Masig, Warraber and Poruma. They claimed that the State party had violated their rights under article 2, (*Right to an effective remedy*), read alone and in conjunction with articles 6 (*Right to life*), 17 (*Right to privacy, family and home*) and 27 (*Rights of minorities*); and the same articles each read alone. They also claimed violations of the rights of their children (who were mentioned in the file) under article 24 (1) (*Rights of children to special protection*), read alone and in conjunction with articles 6, 17 and 27 of the Covenant.¹⁸²

The claimants were severely worried about the climate change impacts on their territories, whereas large sea-level rising could render the islands inhabitable.

In the file that they presented upon the HRC, they showed the report elaborated by the Torres Strait Regional Authority (TSRA), which stated that their native territories were afflicted by severe environmental events such as sea level rise, which had already led to flooding, erosion, and environmental degradation on the islands. Moreover, the contamination of salt water had also impacted the soil which had become infertile, determining serious consequences for the food supplies and incomes of the affected communities. Changes in seasonal patterns, winds, precipitation, and temperature had

¹⁸¹ Supra note (86)

¹⁸² Human Rights Committee, *Views adopted under Article 5(4) of the Optional Protocol concerning communication No. 3624/2019*, CCPR/C/135/D/3624/2019, 22 September 2022

also disrupted the livelihoods of the islanders, making it difficult to pass on traditional ecological knowledge.¹⁸³

The Torres Strait Regional Authority (TSRA) warns that severe disruptions to traditional lifestyles and essential cultural resources would trigger substantial social, cultural, and economic problems for the local communities. These issues could impact key areas such as infrastructure, housing, agriculture, fisheries, and public health, even leading to a deterioration of the health conditions of the locals.

In the claim, the authors highlighted that the Australian government did not implement an effective adaptation program to ensure the long-term habitability of the islands, to the extent where local authorities had to take the matter into their own hands, since promised fundings was not flowing towards the islands. In addition to the State insolvency towards the islands, the claimants lamented that the State party failed its obligations towards climate change. Indeed, in 2017, Australia had the second-highest per capita greenhouse gas emissions globally, with a significant increase from 1990 to 2016, driven by policies promoting fossil fuel use, particularly coal. The authors of the complaint asserted that they had extinguished every domestic remedy to guarantee the protection of the aforementioned rights, as Australian constitution did not enclose such rights, moreover the High Court of Australia had ruled that government entities do not have a duty of care to prevent environmental harm.

The claims that were presented by the authors mentioned different Articles of the ICCPR that the State had failed to observe:¹⁸⁴

- *Failure to Adopt Adaptation Measures (Article 2)*: The State party had not implemented laws or measures, such as infrastructures to contain the sea-levels rise, to protect the authors' rights, including their *right to life (Article 6)*, *privacy and home (Article 17)*, *minority culture (Article 27)*, and *the rights of children (Article 24)*.

¹⁸³ "Communication No. 3624/2019 submitted by Daniel Billy et al., under the Optional Protocol to the International Covenant on Civil and Political Rights, 13 May 2019, available at: https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2019/20190513_CCPRC135D36242019_complaint.pdf

¹⁸⁴ Supra note (99)

- *Right to Life (Article 6)*: the State party had failed to allow the authors to live their life with dignity, consisting of their right to live in a healthy environment, considered as integral to their right to life.
- *Impact on Minority Culture (Article 27)*: The authors' minority culture depends on the continued existence and habitability of their islands and on the ecological health of the surrounding seas, if these cannot be ensured through the enforcement of protection measures by the States, minorities could have been forcibly displaced, permanently modifying their way of enjoying and living their own culture.
- *Privacy, Family, and Home Life (Article 17)*: regarding this provision, the authors highlighted that climate change effects had already affected their private, family and home life, with the real danger of family separation. The State Party is accused of not having taken adequate mitigation measures in this regard.
- *Rights of Children (Article 24)*: according to the authors, the State party failed to protect the rights of future generations, particularly the ones of the named children, who are most vulnerable to the impacts of climate change. Protecting children's rights is fundamental to achieving the physical and cultural longevity of their communities.

Australia presented some observations regarding the admissibility of the claims, as well as their merits. It especially focused on the fact that the alleged violations related to international climate change treaties, such as the Paris Agreement, are outside the scope of the Covenant. The State party also denied the non-involvement in mitigation and adaptation practices targeted to the development of the islands. The authors of the complaint, in response, highlighted the real and imminent threat of displacement from their islands within the next decade if significant adaptation measures are not taken.¹⁸⁵

The decision of the HRC on the matter was the following: Australia was considered guilty of denying the enjoyment of Article 17, Article 27 and Article 24(1) of the ICCPR, mandating that the State party would have to provide remedies to the authors of the complaint. These remedies comprised of adequate compensation for the harm suffered

¹⁸⁵ Supra note (99)

due to the impacts of climate change and the lack of sufficient government action to be addressed to the authors of the complaint and their children; the implementation of adaptation measures to ensure that the Torres Strait Islanders could live with dignity in their territories, as well continue to protect the Islanders' homes, culture, and environment. Furthermore, Australia was also directed to take all necessary measures to prevent similar violations in the future, including the reduction of greenhouse emissions and boost climate resilience infrastructures in communities like the ones of Torres Strait Islands.¹⁸⁶

The right to life was deemed as non-applicable to the situation because of requirements that were similar to the ones that were requested for the case of *Teitiota v. New Zealand*: the situation of Torres Strait Islands was not considered an imminent threat nor directly linked to their individual conditions, but rather a widespread threat which, however, was not strong enough to consist of a violation of the right to life under Article 6 of the ICCPR.

This case was of ground-breaking importance to make progress in the States responsibility over climate litigations. Even if the decisions of the UNHRC are not binding, but they are to be implemented based on States' discretion, they can still lead to indirect positive impacts, such as changes in public authority behaviors. The case brought positive direct consequences indeed, such as the 25 million of AUS dollars which were committed from Australia to invest in adaptation measures towards the islands; as well as positive indirect measures, such as a consistent rise in public awareness and political engagement to the plight of climate refugees, who finally can make their claims heard and seen from the international community and the competent monitoring bodies. Plus, as mentioned before, case law does not have only an immediate importance, but it also crystallizes as precedent which can be used to solve subsequent cases (as it was for the Corte di Cassazione in Italy, which mentioned the case of *Tetiota*).¹⁸⁷

Furthermore, In the Torres Strait Islanders case, the applicants argued that international climate treaties obligations, like the ones present in Paris Agreement, should be

¹⁸⁶ Supra note (99)

¹⁸⁷ R. Luporini, "*Climate Change Litigation before International Human Rights Bodies: Insights from Daniel Billy et al. v. Australia (Torres Strait Islanders Case)*," Dirpolis Institute (Institute of Law, Politics and Development), Sant'Anna School of Advanced Studies, Pisa, Italy, published online 15 November 2023.

considered in the interpretation of human rights obligations. Although Australia argued that these treaties were outside the Committee's jurisdiction, the Committee accepted the argument to the extent that climate treaties were used to interpret obligations under the Covenant. This decision reflects a growing trend of integrating environmental protection into human rights treaties, a practice also seen in the Committee's General Comment No. 36 on the right to life.¹⁸⁸

Following the experiences portrayed in these two cases, even if human rights treaties were not conceived to treat climate change matters, they are becoming more and more relevant in modern challenges. Climate change further complicates the application of human rights law due to its diffuse impact and multicausality, which could be of immediate manifestation but also slow and gradual. Despite the difficulties, the Torres Strait Islanders case proved that States can be held responsible for human rights violations in relation to climate change, thus it is the duty of the international community to review current international legal frameworks to adequately address the impacts of climate change.

¹⁸⁸ Ibid.

3rd CHAPTER:

Securitizing Climate Refugees

The legal status of climate refugees is closely linked to how their plight is politicized and framed in public discourse. In particular, security-related narratives of climate-induced forced displacement, where movement is seen as a threat to national and global security, have profound implications for the development of policy and legal frameworks. The lack of a specific legal definition for climate refugees has made it difficult to grant them the same protection and rights as conventional refugees. This in turn has made it easier for governments to adopt more restrictive and security-oriented measures, strategically presenting the phenomenon as a global threat that must be addressed immediately and with exceptional measures, without considering the causes and a long-term solution.

I will start this chapter by reviewing the main theoretical approaches on the concept of securitization connected to climate-induced forced migration, in order to assess the theoretical interpretations of climate refugees as a security issues, and the consequential development of political strategies which either lean towards State security, human security or a combination of both. In my analysis of the securitization of climate refugees I will introduce the concept of “*apocalyptic narratives*” which, in different ways and measure, are often included in the discourses of those that want to securitize a certain issue, in this case it is applied to climate-induced displacement. Furthermore, I will discuss some actors that are engaged in the process of securitization at the global and regional level, particularly the European Union (EU) and the United Nations (UN). I will examine how these actors approached the securitization of climate-induced displacement by performing a qualitative analysis on a limited selection of relevant strategic documents produced by such actors. Finally, I will compare the documents, and I will discuss whether they are providing an effective basis for the recognition of the human rights of climate refugees, or if instead they are hindering their legal recognition in order to avoid incurring obligations towards them.

3.1 The securitization process: a definition by the Copenhagen School

Starting from the 1980s, a general awareness began to develop that conceiving national security exclusively in military terms could lead to a limited understanding of security, eventually ignoring other sources of insecurity, militarizing international relations and then inevitably increasing the level of insecurity.¹⁸⁹

In 1998 Buzan, Wæver, and De Wilde introduced the concept of "securitization," which broadens the scope of security analysis to include issues that are not necessarily associated with force, war and military, but they can be also military, political, economic, environmental, and societal.¹⁹⁰ The work of Professor Barry Buzan and the associated development of security studies at the Centre for Peace and Conflict Research in Copenhagen would be later referred to as foundational to contemporary security studies, eventually being indicated as the "Copenhagen School".¹⁹¹

An important difference that is made by the Copenhagen School is the one between the concept of politicization and the one of securitization. The former is defined as *"the process by which an issue, event, institution, or individual enters into the political discourse or is influenced by political factors. This can involve framing something in terms of political ideologies, power struggles, or policy debates, often with the intent to advance a particular agenda or gain political leverage. When something is politicized, it may become a subject of partisan disagreement or be used to gather support or opposition among the public or within political institutions."*¹⁹² While we can refer to the securitization process as: *"when an issue is presented as posing an existential threat to a designated referent object (traditionally, but not necessarily, the state, incorporating government, territory, and society). The special nature of security threats justifies the use of extraordinary measures to handle them. The invocation of security has been the key to legitimizing the use of force, but more generally it has opened the way for the state to*

¹⁸⁹ Monteleone, C., *Security and securitization: Copenhagen and beyond*. RAGION PRATICA, 2017(1), 9-24 [10.1415/86434], 2017

¹⁹⁰ Buzan, Barry, Ole Wæver, and Jaap De Wilde. *Security: A New Framework for Analysis*. Lynne Rienner Publishers. 1998

¹⁹¹ M. Berglund, *The Dilemma of Displacement: Dangerous or in Dire Need? A Framing Analysis of Securitisation with regards to Climate Change Induced Displacement (CCID) within the EU* (Master's thesis, Uppsala University, Department of Government, 2021)

¹⁹² Supra note (2)

mobilize, or to take special powers, to handle/existential threats. Traditionally, by saying “security,” a state representative declares an emergency condition, thus claiming a right to use whatever means are necessary to block a threatening development.”¹⁹³ According to Busan et al., securitization can be understood as a “*more extreme form of politicization*”¹⁹⁴, in a way.

In cases where a security threat is identified, a consequential political move is followed, and widely considered as justified in the context. This political move usually represents a special kind of politics “above traditional politics”.¹⁹⁵ In this way, securitization can be considered as: “*constituted by the intersubjective establishment of an existential threat with saliency sufficient to have substantial political effects*”,¹⁹⁶ thereby justifying the use of extraordinary measures that go beyond the realm of normal politics.

Securitization involves a securitizing actor (e.g., a government, political leader, or institution) who declares that a specific issue poses a significant threat to a referent object, performing a securitizing move. In order for the issue to become securitized, its framing requires the acceptance of a relevant audience, which legitimizes taking extraordinary actions (such as emergency powers, military intervention, or suspension of normal procedures) to address the threat.¹⁹⁷

The essence of securitization lies in how an issue is rhetorically constructed and accepted as a threat, which then legitimizes breaking the usual political rules to manage the perceived danger.¹⁹⁸ Securitization does not determine exclusively positive or negative impacts for the securitized object, as it could represent a powerful tool that can bring necessary attention and action to critical issues. However, it carries the risk of leading to exclusionary, militaristic, or overly politicized responses. The impact of securitization depends on how it is implemented through policy, granting balance between security concerns as well as broader ethical, humanitarian, and social considerations.

¹⁹³ Supra note (2) pp. 21

¹⁹⁴ Supra note (2), p. 23

¹⁹⁵ Supra note (2) p. 23

¹⁹⁶ Supra note (2), pp 23-25

¹⁹⁷ *ibid.*

¹⁹⁸ Supra note (2)

3.2 Securitization of climate-induced displacement: different theoretical perspectives

The effects of climate change are widely regarded as one of the most urgent and pressing political challenges of our time. Both processes of environmental degradation and climate-related events such as rising sea levels, extreme weather conditions and resource scarcity are presented as existential threats to states and societies. This interpretation justifies the use of extraordinary measures, including military interventions, strict border controls and international political change, to counter the perceived threats. Consequently, the term “*climate security*”¹⁹⁹ was created to refer to the threat multiplier role attributed to climate change, which significantly exacerbates existing social, economic and political tensions and ultimately influences migration patterns and conflict dynamics, among other things.

Migration itself has been gradually securitized: migrants are usually portrayed in the political discourse as serious potential threats to the receiving countries' national security, social stability, and cultural identity. As a result, migration is addressed through a security lens, leading to policies focused on border control, surveillance, and deterrence. These measures are justified by the perceived need to protect the State and its citizens from the destabilizing effects of uncontrolled migration.²⁰⁰

Within security studies, there is a crucial distinction between concepts of State security and human security. The former prioritizes the protection of the State and its citizens, and thus it translates into the enhancement of border security and the protection of national frontiers. According to this approach, migration is perceived as a threat mining the territorial integrity, cultural cohesiveness, national identity and ultimately the foundations of the principle of sovereignty²⁰¹. On the other hand, there is the human security approach,

¹⁹⁹M. J. Trombetta, *Environmental security and climate change: analysing the discourse*, Delft University of Technology, Cambridge Review of International Affairs, Volume 21, Number 4, December 2008, Centre of International Studies

²⁰⁰ibid.

²⁰¹D. Butros, V. Brodén Gyberg, and A. Kaijser, “*Solidarity Versus Security: Exploring Perspectives on Climate-Induced Migration in UN and EU Policy*,” *Environmental Communication* 15, no. 6, pp 842-856, 2021

which focuses on the safety of vulnerable categories of individuals regardless of their citizenship, strongly influenced by the universality of the human rights principles.²⁰² The conceptualization of security here is wider than in the State's security approach, encompassing not only the freedom from fear coming from war or political violence, but also threats to food, health, environmental, community and individual safety. This concept has gained great recognition over the years: the IPCC included a chapter on human security in its fifth report in 2014, and it has been defined as '*a condition that exists when the vital core of human lives is protected, and when people have the freedom and capacity to live with dignity*'²⁰³.

When examining the security framing of climate change induced displacement, it is fundamental to make a difference between the intentions of pursuing measures aimed at ensuring the security of a State and its citizens, or, on the other hand, those that are based on human security, in order to understand how the phenomenon is framed, and which security responses are justified.²⁰⁴

3.2.1 *The neorealist approach*

A State-security based approach is typical for the scholars that are more "traditionalists" and tend to originate from the neorealist school. They perceive climate change through national interests, not properly framing it as a fundamental threat (such as religion, race, finances, etc.), rather as an accelerator or a catalyst to exacerbate tensions among countries.²⁰⁵ According to this view, nation-States are mandated to defend their national borders from tides of climate refugees (mostly coming from the Global South), who could want to control and deplete their resources. Starting from the 1980s, when climate change

²⁰²Supra note (2)

²⁰³Adger et al., *This must be the place: Underrepresentation of identity and meaning in climate change decision-making*, Global Environmental Politics, Volume 11, Issue 2, Pages 1 - 25, May 2011

²⁰⁴ Supra note (2)

²⁰⁵ Doyle, Timothy, and Sanjay Chaturvedi, 'Climate Refugees and Security: Conceptualizations, Categories, and Contestations', in John S. Dryzek, Richard B. Norgaard, and David Schlosberg (eds), *The Oxford Handbook of Climate Change and Society* (2011; online edn, Oxford Academic, 6 Jan. 2012)

was being identified as a consistent global threat, this approach has led to great emphasis on its catastrophic effects on people, especially on migration flows. In the general discourse, expressions such as ‘mass devastation’, ‘violent weather,’ and ‘ruined national economies’, became more and more frequent, highlighting the feelings of danger and terror coming from such a situation. Climate change was interpreted as a threat multiplier capable of disrupting regional equilibriums in vulnerable areas, as well as creating national security challenges for States of the Global North (such as the United States, for example).²⁰⁶ The security dimension on the issue is dramatized through the use of expressions such as ‘climate terrorists’, referring to individuals or groups who might use climate change as a justification for acts of violence or terrorism. The general conception of the realist approach towards climate-induced forced displacement is, thus, strongly focused on the protection of national interests, fostering an “us vs them” paradigm²⁰⁷. This approach authorizes the use of extreme (sometimes even militaristic) restrictive measures to be able to protect the interests of the State and its citizens. There are neorealist approaches from even the less “wealthy” nations afflicted by the impacts of climate change, which use this narrative to reinforce the importance of their own agency and desire not to be considered passive victims of environmental degradation, as much as highlight their right to the maintenance of their own State structures, the preservation of their own culture and territory.²⁰⁸

3.2.2 The liberal approach

Another approach which explores the securitization of climate-induced forced displacement is the liberal interpretation. The liberal thinking that developed following the end of the Cold War developed a concept of global policy-shaping that goes beyond national borders, encompassing a plurality of interests, called multilateralism.²⁰⁹ During the 1990s, more liberal concepts of collectivity and identity were developed, eventually evolving into the idea of environmental security, among others. Environmental security

²⁰⁶ *ibid.*

²⁰⁷ *ibid.*

²⁰⁸ *ibid.*

²⁰⁹ *ibid.*

is perceived in a more inclusive way, taking into consideration the interests of people from the Global South, and it is not interpreted anymore as a major national threat, rather it is put at the center of cooperative models of global security.²¹⁰ The liberal approach to the securitization of climate-induced displacement is the one employed by non-State actors and nongovernmental organizations (from the North mostly), as they seek to engage with the South of the world through bi or multilateral agreements. A great element of discussion within the liberal wave is the one of mitigation of climate change impacts, through the implementation of common policies which are committed to reduce the human footprint of the environment (e.g. the Kyoto Protocol).²¹¹ Another discourse among liberal scholars falls on the adaptation measures needed to contrast climate change impacts, among which there is the definition of a juridical status for climate refugees. The question here is whether being included into the 1951 Refugee Convention definition of refugee would validate additional securitization for climate change and climate-change induced migration, eventually crystallizing the threat of climate refugees for nation-States.²¹² On this specific point, I argue that while concerns about securitization are valid, legal recognition of their refugee status would likely reduce their portrayal as a threat. Indeed, legal status facilitates structured, controlled, and humane management of migration, which enhances both State security and human security dimensions. The focus should be on the benefits of legal recognition, such as reducing irregular migration, fostering integration, and fulfilling ethical obligations, rather than on the unfounded fear that it will inherently lead to increased securitization²¹³. The modalities in which the recognition of the legal status of the people undergoing forced displacement because of climate change is a matter of great discussion, as we have seen previously both in Chapter 1 and Chapter 2. A liberal alternative to the integration of such category under the 1951 Geneva Convention would be to develop an ad-hoc “*Protocol on the Recognition, Protection and Resettlement of Climate Refugees to the United Nations Framework Convention on Climate Change (UNFCCC)*”, which should be dealing with the issue not

²¹⁰Sprinz, D.F., *Environmental Security and Instrument Choice*. In: Gleditsch, N.P. (eds) *Conflict and the Environment*. NATO ASI Series, vol 33. Springer, Dordrecht, 1997

²¹¹ supra note (17)

²¹² supra note (17)

²¹³ supra note (17)

exclusively in terms of emergency response to extreme weather events, nevertheless including gradual and voluntary resettlement programs.²¹⁴

3.2.3 *The Critical approach*

In contrast with their liberal counterpart, scholars following a critical approach on the securitization process of climate-induced forced migration do not focus on the ecological footprint which Northern States are mandated to contain, instead they concentrate on the ecological debts that Northern States have generated towards the Global South, ultimately establishing environmental *insecurities*.²¹⁵

Climate debts are considered as a special case of environmental justice, which originated from the over-exploitation of environmental space of climate-vulnerable societies by industrialized societies in order to accumulate wealth and, consequently, widening inequalities. Following this interpretation, climate refugees are considered as an additional component of such climate debts, thus countries belonging to the Global North should be responsible for accommodating these refugees, as well as actively taking responsibility and addressing the past environmental damage they have caused.²¹⁶ Some scholars pertaining to security studies would want to pursue solutions within the existing refugee and climate change legal frameworks, however the validity of such frameworks is questioned by others, as they are considered excessively focused on State security and control, rather than protecting the human rights of vulnerable individuals. They argue that the very act of securitization, which involves prioritizing military and security concerns, can disenfranchise people and limit their ability to participate in environmental decision-making.²¹⁷

The connection between securitization and climate refugees has been faced in different theoretical ways. While each of these approaches offers distinct perspectives on the securitization of climate-induced migration, it is important to recognize that they are not

²¹⁴Biermann, F., Boas, I; “*Climate Change and Human Migration: Towards a Global Governance System to Protect Climate Refugees*”, 2012 In: Scheffran, J., Brzoska, M., Brauch, H., Link, P., Schilling, J. (eds) “*Climate Change, Human Security and Violent Conflict*”. Hexagon Series on Human and Environmental Security and Peace, vol 8. Springer, Berlin, Heidelberg, 2012

²¹⁵ supra note (17)

²¹⁶ supra note (17)

²¹⁷ supra note (17)

mutually exclusive. However, following the evaluation of legal tools for the protection of climate refugees which was conducted in the previous chapter (Chapter 2), it seemed that the most relevant was the one offered by human rights law (both for applicability and universality). Therefore, instead of a State-security approach, which tends to depict catastrophic scenarios of tides of migrants looking to disrupt national resources, pursuing mostly a human-security based approach seems more appropriate for the recognition of climate refugees' plight, as well as granting them a "life with dignity"²¹⁸. Clearly, this must be accompanied by the desire to reach climate justice, which is achievable through the exploration of the root causes which determined such environmental insecurities, and consequently such striking differences, among the Global North and the Global South.

3.3 Actors of securitization

According to the Copenhagen School, the actors of securitization are the second important element which makes part of the securitization structure, together with the securitizing move (the so-called *speech act*) and the audience²¹⁹. The actors of securitization are crucial as they are the individuals, groups, or institutions responsible for initiating and performing the securitizing moves. Using language and discourse, these actors are able to turn issues into existential threats that justify emergency responses. They perform the speech act, which is the discursive action that shifts an issue from the political realm into the security domain. By doing so, these actors construct a narrative that emphasizes the urgency of the threat and persuades the audience that extraordinary measures, often bypassing normal political procedures, are necessary.

Statements regarding climate-induced migration often evoke apocalyptic images: millions of desperate people fleeing rising seas, human settlements reduced to ruins by encroaching deserts, and entire displaced communities lumbering through floodwaters. While such fears are valid, as they, somehow, describe the suffering of people forcibly displaced by the dangerous effects of climate change, such ominous narratives may be

²¹⁸ J.L. Sowers, E. Weinthal, M. Daoudy; *What is climate security? Framing risks around water, food, and migration in the Middle East and North Africa*, Wiley Interdisciplinary Reviews Water, 9(1), March 2022

²¹⁹ Supra note (2)

counterproductive to properly addressing the situation of climate refugees and actually providing them with protection. In fact, these statements that spectacularly dramatize the living situation of climate refugees can lead to increased feelings of xenophobia, the normalization of extreme countermeasures and the general depoliticization of climate issues. According to Professor Giovanni Bettini (2013)²²⁰, who warned against the use of dramatic expressions as early as 2013, this behavior could have serious consequences for various sectors. The author analyzed some documents produced by two UK-based non-governmental organizations that aimed to present a humanitarian perspective on climate-induced migration from the point of view of civil society actors. Even if their intention was not strategic, rather driven by valid arguments such as climate justice and the impact of climate change on the perception of human rights, the style of these documents falls into the realm of the so-called crisis narrative using recurring alarmist expressions. As characteristics of this type of report, the author mentions “dramatic tones, the idea of being on the verge of a downward spiral, a sense of inevitability and urgency”. Furthermore, the documents use many evocative words such as “threat”, “urgent”, “fear”, or even dramatic expressions such as “the human tide”²²¹. The documents analyzed by the author all convey a sense of inevitability: climate-induced migration seems doomed to be a phenomenon that brings the parties involved to a kind of rupture that eventually leads to political instability, conflict and crisis for both the Global South and the Global North, which is the only one responsible (and perhaps even capable) of mitigating the effects of this situation and restoring global order.

Actors of securitization are not limited to a single governance level but can operate across international, regional, and national levels, depending on the context and the scope of the issue at hand.

For the purpose of this research I will be focusing on the international level, analyzing the positioning of the United Nations towards climate-induced forced displacement, and the regional level, specifically addressing the EU’ strategic approach to the issue.

²²⁰ G. Bettini, “*Climate Barbarians at the Gate? A critique of apocalyptic narratives on ‘climate refugees’*”, *Geoforum*, Volume 45, Pages 63-72, March 2013

²²¹ *ibid.*

As tools of analysis, I will use six documents that have been qualitatively selected, and that represent an official standpoint on the climate, migration and security nexus of the actors under consideration, UN and EU, over a time period from 2003 to 2022. These documents do not refer to specific policies being implemented by the actors, but rather their strategic approach to climate change impacts (including displacement).

The differences in the organizational structures and objectives of these bodies suggest that they are likely to adopt nuanced stances on the securitization of climate-induced forced displacement, leaning towards a state-security, human-security or mixed approach.

3.3.1 The United Nations

The United Nations (UN) is an intergovernmental organization established to maintain international peace and security, while also promoting respect for equal rights and freedoms for all individuals, as stated by the Charter of the United Nations²²². Despite its moral authority and the widespread adoption of its conventions and agreements by many different Member States, the UN disposes of limited legal tools to effectively enforce its objectives.²²³ Among the key areas and initiatives responsible to guide the UN's approach to manage climate-induced migration, its focus on global challenges is encapsulated in the 2030 Agenda for Sustainable Development, which provides a universal framework with 17 Sustainable Development Goals (SDGs). These goals guide not only UN agencies but also Member States in establishing their policies and turning them into action, while addressing key issues like poverty, inequality, and climate change. However, while migration is a recurring theme across several SDGs, the framework lacks an explicit connection between climate change, environmental degradation, and migration²²⁴. There are several different sub-organizations within the UN system which have been committed in dealing with climate change induced displacement at the international level: such as the United Nations High Commissioner for Refugees (UNHCR), the United

²²² United Nations, *United Nations Charter*, Chapter 1, Article I, 1945, available at: <https://www.un.org/en/about-us/un-charter/chapter-1>

²²³ Supra note (14)

²²⁴ Supra note (14)

Nations Framework Convention on Climate Change (UNFCCC), and the United Nations Environment Programme (UNEP). The UNHCR oversees the UN Advisory Group on Human Mobility and Climate Change, which provides technical support to UNFCCC Parties on climate change-induced population displacement, migration, and planned relocation (collectively, “human mobility”)²²⁵.

Among all these different agencies which work to address, among other priorities, the adverse impacts of climate change, it is quite complex to select just a few documents to testify whether in the last 15 years the UN has securitized, and how, the issue of climate-induced displacement. For the purpose of my research, I selected a few relevant documents to perform a qualitative analysis on how the issue of climate-induced displacement has been framed in UN security strategy.

The first document that I’m discussing is “*Climate Change and its possible security implications*”, authored by the Secretary General of the UN in 2009 and presented during the 64th session of the UN General Assembly (UNGA). The report was prepared following the UNGA resolution A/RES/63/281, which invited UN organs to consider the issue of climate change within their mandates.²²⁶

In the document, the author generally acknowledges the role of climate change as a “*threat multiplier*”²²⁷ which exacerbates “*threats caused by persistent poverty, weak institutions for resource management and conflict resolution, fault lines and a history of mistrust between communities and nations, and inadequate access to information or resources.*”²²⁸ Despite this framing which leans toward a State-security approach, the author then goes on to provide several “threat minimizers,” which become the core of the paper and demonstrate a cautious approach to the process of securitizing this issue. Among these minimizing measures are listed: “*climate mitigation and adaptation, economic development, democratic governance and strong local and national*

²²⁵ supra note (14)

²²⁶ United Nations General Assembly, Resolution adopted by the General Assembly: “63/281 *Climate change and its possible security implications*”, 11 June 2009, available at: <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/res%2063%20281.pdf>

²²⁷ United Nations General Assembly, “*Climate change and its possible security implications*”, A/64/350, 11 September 2009, Available at: <https://digitallibrary.un.org/record/667264?v=pdf>

²²⁸ *ibid.* p. 2

institutions, international cooperation, preventive diplomacy and mediation, timely availability of information and increased support for research and analysis to improve the understanding of linkages between climate change and security”.

The document presents some elements which denote sentiments based on State-security, since it also represents points of view coming from Member States, such as security risks coming from territorial loss, possible resource conflicts and potential disputes over territorial claims. However, at the beginning of the document the official standpoint is declared “*the emphasis on prevention is consistent with the efforts of the United Nations to move from a culture of reaction to one of conflict prevention, as well as its emphasis on sustainable development as a crucial contributor to conflict prevention.*”²²⁹ The special consideration given to prevention signals a strategic shift from traditional reactive and short-term measures aimed at resolving pressing crises, to procedures aimed at investigating the root causes of conflict before they escalate, such as poverty, inequality, resource scarcity, or environmental degradation. Climate induced- displacement is addressed, specifically referring to the case of Small Pacific Islands, and the possibility to develop a “*new and climate-focused legal framework*”²³⁰ seems to be considered necessary to protect the human rights of people affected.

In general, the approach that is presented within the view reported by the Secretary General is strongly anchored towards the protection of the human security dimension, including human rights protection, sustainable development, preventive measures, as well as adaptation and resilience programs. The cruciality of human security is considered also in regard to the conservation of State security, implying a mutual interdependence between the two concepts²³¹.

The second document which I’m assessing is “*Human Mobility in the Context of Climate Change UNFCCC Paris COP 21*” authored by the UN Advisory Group on Human Mobility and Climate Change in 2015. The report aims at providing official recommendations on how migration is affected by climate change with regards to resilience, vulnerability and adaptation, suggesting various measurements of how to

²²⁹ *ibid.*

²³⁰ *ibid.* pag. 16

²³¹ *ibid.* pag. 5

tackle such an issue. There are no mentions of State-security related measures, while references to the importance of human security are clear,²³² such as “*climate change is a threat to livelihoods and human safety*”. Furthermore, the authors call for the recognition of migrants and refugees, for women and children especially, as vulnerable groups affected by climate change impacts, highlighting the necessity to ensure that “*migration occurs in a manner that fully respects the dignity and human rights of those who move and those who stay behind*”.²³³ The UN Advisory Group on Human Mobility and Climate Change refers to migration as an adaptation strategy which has to be pursued with dignity and through careful and well-financed programmes, within “*local, national and regional climate change adaptation, resilience building, and disaster risk management plans and activities*”.²³⁴ Contrary to the first document analyzed, in this report no new legislation is advocated by the UN, while planned relocation, implemented in consultation with and with respect for the rights of the people and communities involved, seems to be a preferred option to diminish the vulnerability of the affected populations.²³⁵

The final document that I’m assessing is the speech that the UN Secretary General, António Guterres, has addressed to the UN Security Council on the 23rd of February 2021²³⁶. Guterres frames climate change as a threat multiplier that exacerbates existing vulnerabilities, such as poverty, inequality, and resource scarcity, leading to instability, conflict, and displacement. This concept has been presented similarly by all the other documents previously analyzed. Through this speech, the UN Secretary addresses the urgency to collective action towards climate change and its impacts, and he identifies four main priorities that should be implemented by Member States: preventive measures, adaptation and resilience frameworks, human-centered security approach and collaboration across UN bodies to address the risks of climate change.

²³² UN Advisory Group on Climate Change and Human Mobility, “*Human mobility in the context of climate change*”, UNFCCC Paris COP21, November 2015, p. 4

²³³ *ibid.* pag. 7

²³⁴ *ibid.* pag. 5

²³⁵ *ibid.* pag. 7

²³⁶ United Nations, *Secretary-General's remarks to the Security Council - on addressing climate-related security risks to international peace and security through mitigation and resilience building*, 23 February 2021, available at: [link](#)

When applying classical securitization theory to an organization like the UN, the framing of an issue as a global security threat implies, among other things, shifting control over debates being within the UN General Assembly's competence, a more horizontal body with universal membership to all the 193 States member to the organization, to the UN Security Council (UNSC), a much smaller body with a restricted representation of the UN effective membership, which can dispose of significant powers, such as the ability to impose sanctions or authorize the use of force.²³⁷ Moreover, when an issue is added to the agenda of the UNSC it is very unlikely that it is going to be removed from its competence sphere, making securitization a highly consequential move. The implications of such an agenda-shift from the UNGA to the UNSC's competence entail that the control of the agenda is transferred from a broader and horizontal organ such as the UNGA, to a smaller and power-imbalanced one such as the UNSC. Particularly, the rationale behind the decision to frame an issue as a threat to global security lies precisely in the strategy of bringing this issue within the expertise of a body where some members possess significantly greater powers than others. This is the case of the five permanent members of the UNSC (the so-called P5), namely China, Russia, France, the United Kingdom and the United States.²³⁸

By securitizing an issue, meaning framing it as an imminent global threat requiring the intervention of the Security Council, the P5 can expand their influence over global policy matters²³⁹. This is because the UNSC has more concentrated decision-making power compared to the larger, more inclusive UN General Assembly. Furthermore, in the UNSC the P5 can use their veto power, thus they have the ability to significantly influence (and sometimes even hinder) the outcomes of debates within the UNSC, enhancing their control over international issues. On the other hand, members that are not part of the UNSC are less likely to securitize, as they have a better chance to make their voice heard and influence the agenda within the debate at the UN General Assembly. Particularly, classical securitization theory would suggest that States that are most affected by a threat, as Small Island Developing States (SIDS) are afflicted by climate change impacts such

²³⁷ S. B. Arias, *Who Securitizes? Climate Change Discourse Within the United Nations*, University of Pennsylvania, *International Studies Quarterly*, 66, 2022

²³⁸ *ibid.*

²³⁹ *ibid.*

as rising sea levels and adverse weather events,²⁴⁰ supposedly they should be the ones that are most interested in leading efforts to securitize this concern, and ultimately transfer the debate in forums like the UNSC, which can take decisive action on global security issues. However, the actual behavior of States is quite different. Despite being strongly active in the advocacy for climate change action, SIDS usually resist securitization of such matter because it would marginalize their role in shaping climate policy, as a matter of fact they can find a better opportunity in the UNGA to declare their position and intentions toward such issue instead of the restricted representation of the UNSC (currently, SIDS do not even have a representative in the UNSC out of the 39 States belonging to the group)²⁴¹.

Climate change and its impacts have been objects of discussions on at least four different occasions during the UN Security Council sessions. Indeed, in 2007²⁴², 2011²⁴³, 2017²⁴⁴ and in 2021,²⁴⁵ the UNSC discussed climate change and security interconnectedness through ad-hoc sessions. In the non-binding resolution of 2017, it recognized “*the adverse effects of climate change and ecological changes among other factors on the stability (...)*” and “*the need for adequate risk assessments and risk management strategies by governments and the United Nations relating*”²⁴⁶. While the UNSC has been acknowledging the security implications of climate change, including its role in exacerbating conflicts and humanitarian crises, no resolution directly addresses the concept of climate-induced displacement, thus it does not give binding guidelines on how

²⁴⁰ Intergovernmental Panel on Climate Change (IPCC), *Global Warming of 1.5°C: An IPCC Special Report on the Impacts of Global Warming of 1.5°C above Pre-Industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty*, eds. Masson-Delmotte, V., Zhai, P., Pörtner, H.-O., et al., "Summary for Policymakers," Section: "Projected Climate Change, Potential Impacts and Associated Risks.", 2018.

²⁴¹ United Nations, <https://news.un.org/en/story/2023/06/1137382>

²⁴² United Nations Security Council, “*Open Debate on Energy, Security, and Climate*”, held on 17 April 2007

²⁴³ United Nations Security Council, “*Open debate on the impact of climate change on peace and security*”, held on 20 July 2011

²⁴⁴ United Nations Security Council. (2017). *Resolution 2349 (2017)*, Adopted by the Security Council at its 7900th meeting, on 31 March 2017. S/RES/2349, available at: <https://www.refworld.org/legal/resolution/unsc/2017/en/116859>

²⁴⁵ United Nations Security Council. (2021). “*Draft Resolution on Climate and Security*”, presented by Ireland and Niger, vetoed by Russia on 13 December 2021

²⁴⁶ supra note (43) p.7

to properly frame it in a security framework, mostly leaving it up to the Member States to address the issue according to their national priorities.

3.3.2 *The European Union*

The European Union (EU) is a supranational political and economic union of 27 member states, primarily located in Europe. The EU's key goals include promoting peace, well-being, security, and justice within its borders, and its Charter of Fundamental Rights recognizes the right to asylum in accordance with international refugee law²⁴⁷. In contrast to the UN's more decentralized and advisory role, the EU's approach is characterized by its capacity to enact enforceable measures and to drive collective action among its member states. Regulations and decisions made by the European Commission and European Council are binding across all Member States, enabling the EU to create a unified legal framework for its policies²⁴⁸.

The European Union is one of the most influential international actors in both the fields of climate change and migration, additionally, it is an established player in the securitization process both regionally, for the territories within its jurisdiction and competence, and internationally, as it exercises considerable influence in the decision-making processes that led to the conclusion of relevant agreements featuring displacement determined by climate change impacts.²⁴⁹ As a securitizing actor, the EU has the capacity to address climate-induced displacement not only through its internal policies but also by leveraging its influence on global forums. By framing climate-induced migration as a security challenge, the EU aims to integrate it into its broader security and migration strategies. This approach allows the EU to exert considerable influence over how climate-induced displacement is addressed, particularly in terms of policy implementation and international cooperation.²⁵⁰

²⁴⁷ Article 18, *Charter of Fundamental Rights of the European Union*, 2000/C 364/01.

²⁴⁸ *supra* note (14)

²⁴⁹ J. Sperling & M. Webber, "The European Union: security governance and collective securitisation", *West European Politics*, 42:2, 228-260, 2019.

²⁵⁰ *supra* note (14)

Among the many initiatives and policies relevant to describe the EU's approach to climate-induced displacement securitization, I chose to include in my research three documents summarizing the European Union's strategic conceptions toward this issue over the past 20 years. The qualitative analysis of these documents, as mentioned in the introduction to the chapter, is intended to highlight how this process has settled within the political and strategic dynamics of the EU and how it has then materialized in its strategic consideration toward climate-induced displacement.

The first document that I'm discussing is *"European Security Strategy: A Secure Europe in a Better World"* (2009)²⁵¹. This document encloses a report of the strategic approach of the EU over security matters during the time period 2003-2008, and it was elaborated by Javier Solana, former Secretary General of the Council of the European Union and EU's High Representative for Common Foreign and Security Policy, who then updated the document by inserting considerations relevant for 2009 as well. In the former European Security Strategy (ESS) of 2003, there isn't a specific and explicit mention of the relationship among climate change, displacement and security, however an important feature which was highlighted in the strategy consisted in the broadening of the interpretation of security as it had been conceived so far:

*"In contrast to the massive visible threat in the Cold War, none of the new threats is purely military; nor can any be tackled by purely military means. Each requires a mixture of instruments (...) Regional conflicts need political solutions but military assets and effective 35 policing may be needed in the post conflict phase."*²⁵²

Indeed, The ESS promoted a more comprehensive security concept, acknowledging that non-military threats, such as economic instability and development challenges, could also destabilize regions and lead to crises such as mass migration²⁵³. Five years following this first broadening to the concept of security according to the European Union, in March 2008 the High Representative and the European Commission to the European Council presented a report to the European Council which described climate change as a *"threat*

²⁵¹ Council of the European Union: General Secretariat of the Council, *European Security Strategy – A secure Europe in a better world*, Publications Office, 2009, available at: <https://data.europa.eu/doi/10.2860/1402>

²⁵² *ibid.* pag. 34

²⁵³ *ibid.*

multiplier”, the document was fundamental to frame climate change and its impacts as matters of security for the following report of 2009. It is described as follows:

*“Climate change is best viewed as a threat multiplier which exacerbates existing trends, tensions, and instability. (...) It is important to recognise that the risks are not just of a humanitarian nature; they also include political and security risks that directly affect European interests.”*²⁵⁴

Through this passage climate change impacts are framed as security threats which are not to be considered risky only because they can consist of humanitarian emergencies, instead they could represent political and security threats which would be directly impactful on European interests. It is quite clear that the approach presented in this paper echoes the “apocalyptic narratives” mentioned above, through the use of expressions such as “*millions of environmental migrants that are expected to be generated within 2020*”²⁵⁵. Having previously stated that providing data to give accurate projections of individuals that are going to be displaced by the effects of climate change is very complicated, this expression underlies such a phenomenon as inevitable, a massive scale of displacement that could potentially overwhelm resources and governance systems, especially in Europe. Phrases like “*Such migration may increase conflicts in transit and destination areas. Europe must expect substantially increased migratory pressure.*”²⁵⁶ heighten the sense of urgency, portraying climate-induced migration as a near-certain threat to European borders and social stability, which will also destabilize already fragile regions. Possible actions that are identified to address the impacts of climate change on regional and global security include:

*“Further build up EU and Member State planning and capabilities including civil protection and the use of crisis management and disaster response instruments (civil and military) to contribute to the response to the security risks posed by climate change.”*²⁵⁷

²⁵⁴ High Representative and the European Commission to the European Council, “*Climate Change and International Security*”, S113/08 14 March 2008

²⁵⁵ *ibid.* pag. 4

²⁵⁶ *ibid.* pag. 4

²⁵⁷ *ibid.* pag. 10

The suggestion to build up EU and Member State planning and capabilities, including civil and military crisis management, reflects how climate-induced migration is being addressed from a security and defense perspective, not merely as a humanitarian issue. Providing adaptation and resilience measures would hint towards a special attention being dedicated to the human rights of people impacted by climate change effects, however, through the mention of military instruments, deterrent action to preserve the security of the EU are suggested. The focus on military instruments for disaster response and crisis management further solidifies the State-security approach over climate-induced migration.

Finally, the concluding statement that climate change is "*not a problem of the future but already of today*"²⁵⁸ underscores an urgent and pervasive crisis narrative, which is conceived as irreversible and unavoidable in its terrible impacts: "*even if progress is made in reducing the emissions of greenhouse gasses, weather patterns have already changed, global temperatures have already risen and, above all, climate change is already being felt around the globe*"²⁵⁹.

In conclusion, the securitization process toward the issue of climate-induced displacement began, in a less tangible way, to manifest itself as early as the 2003 strategy was presented. It became instead blatant in the post-2009 strategy, through the specific 2008 paper that highlighted the close relationship between climate change and security. The focus of the EU strategy post 2009 relies on a strong securitized approach towards climate change and its impacts, spotlighting the attention on crisis management, conflict prevention and early warning capabilities,²⁶⁰ demonstrating that the issue is, indeed, framed as a threat attempting to mine EU's security.

The second document which I'm analyzing is "*Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign and Security Policy*" (2016). This document, which was drafted under the leadership of former High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission Federica Mogherini, aims to provide a comprehensive

²⁵⁸ *ibid.* pag. 8

²⁵⁹ *ibid.* pag. 8

²⁶⁰ *supra* note (43)

framework for the EU's external action strategy, in response to a rapidly changing global environment.²⁶¹

Similar to the strategy pre-2016, climate change is considered a *“threat multiplier, that catalyzes water and food scarcity, pandemics and displacement.”* This interpretation closely connects climate change with the concept of security: *“Climate change and environmental degradation exacerbate potential conflict, in light of their impact on desertification, land degradation, and water and food scarcity”*.

However, contrary to the previous state-security based strategy which suggested, among other things, the use of military measures to address crisis management and disaster response to climate change impacts, the actions that are proposed here are more fit for a human-security based approach:

“We will therefore redouble our efforts on prevention, monitoring root causes such as human rights violations, inequality, resource stress (...)” “(...) regular reporting and proposals to the Council, engaging in preventive diplomacy and mediation by mobilizing EU Delegations and Special Representatives, and deepening partnerships with civil society”.

The previous strategy was characterized by the prevalence of reactive measures concerning climate change impacts, while the plan of action presented in 2016 revealed an approach which aimed to proactively address root causes and emphasizes preventive measures of climate change. The approach that is foreseen is one based on cooperation with other countries, following the guidelines of relevant international agreements (such as the Paris Agreement of 2015).²⁶² Throughout the text of the document, there are several references to the concept of “human security”, identified as the preferred attitude which guides an integrated approach to conflict and crisis.²⁶³

Despite the preference over measures aligned with the principle of human security to approach climate change related impacts, it is important to remember that in the period

²⁶¹ EEAS, *“Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign and Security Policy”*, June 2016, available at: https://www.eeas.europa.eu/eeas/global-strategy-european-unions-foreign-and-security-policy_en

²⁶² *ibid.* pag. 40

²⁶³ *ibid.* pag. 9, 14, 28, 31

2015-2016 the “European migration crisis” was at its peak. Indeed, irregular migration was consistently and successfully securitized in different policy frameworks of the Union, reportedly in order to face such a pressing and consistent stream of migrants and refugees. This behavior was conducive to construct the so-called “European fortress”, through the aid of military security methods responsible for averting irregular migrants and protecting internal security.²⁶⁴

The third and final document which I’m analyzing for the case of the European Union is the “*EU Strategic Compass*” (2022)²⁶⁵. This document aims to outline the strategy behind the development of the EU security and defense agenda for the next decade. The compass has been criticized because of its lack of concrete goals, up to the point that it has been defined a “wind chime” rather than a “compass”.²⁶⁶ The critique that is moved derives from the fact that, compared to the 2016 Global Strategy’s focus on fostering internal and external resilience through international cooperation and multilateral governance²⁶⁷, the Compass approach shows a generalized sense of securitization (primarily state-security) applied to different issues, including migration and climate change. Climate change, in particular, is addressed throughout the document as an “*external threat that affects our internal security*” several times. The concept of “resilience” is conceived as strengthening EU member states to handle crises, rather than fostering shared adaptation goals with other regions.

Particularly, the securitized approach over the management of climate change impacts rely on the decisive use of force, as it can be seen by the requirement to Member States to elaborate a national strategy “*to prepare the armed forces for climate change*”²⁶⁸. This signifies that climate change is perceived as a risk multiplier that could need military

²⁶⁴ F. Asderaki & E. Markozani, *The Securitization of Migration and the 2015 Refugee Crisis: from Words to Actions*, In: Tziampiris, A., Asderaki, F. (eds) *The New Eastern Mediterranean Transformed*. Springer, Cham. 2021

²⁶⁵ Council of the European Union, “*A Strategic Compass for Security and Defence*”, 21 March 2022, available at: https://www.eeas.europa.eu/eeas/strategic-compass-security-and-defence-0_en

²⁶⁶ M. Kaim and R. Kempin. “*Compass or Wind Chime? An Analysis of the Draft ‘Strategic Compass’ of the EU*”, in SWP Comments, No. 3/2022 (January 2022), cited in: P. Bargués, “*The EU Strategic Compass: A Blueprint for a European Defensive and Securitisation Policy*”, Joint Brief, No.16, March 2022

²⁶⁷ P. Bargués, “*The EU Strategic Compass: A Blueprint for a European Defensive and Securitisation Policy*”, Joint Brief, No.16, March 2022

²⁶⁸ Supra note (58) p. 29

operations to be tackled, strain resources, and create complex challenges for defense structures.

Furthermore, in the text there is not an explicit mention of climate-induced displacement, consequently it does not state which security strategy is used to address such a topic. The increased focus on scenarios such as disaster relief and humanitarian assistance denotes, however, an approach strongly biased towards crisis-based and short-term support measures. There is not an explicit mention of the desire to address root causes behind displacement, nor provide long-term perspectives that can introduce dignified migration pathways for those who are forced to flee from their homes due to environmental degradation.

3.3.3 Comparing security strategies between the UN and the EU

In light of the selection of relevant documents which has been analyzed it is possible to assert that climate change has been partially securitized by both the EU and the UN over the course of the last 20 years. Indeed, climate change has been collectively defined as a “*threat multiplier*”, responsible for the exacerbation of social, economic and political tensions, which ultimately determined forced displacement and triggered conflicts. However, even if the role of climate change and its impacts have been framed into security frameworks by both the organizations, it has been done at very different degrees of securitization, and with a particular focus either on a human-security or a State-security approach.

In the case of the United Nations, I found that the securitization process of climate change, and its impacts, has been significantly more cautious with respect to the one developed by the EU. In the set of documents that I analyzed for the case of the UN, there have been attempts to securitize the topic of climate induced displacement: the possibility of broadening the UNSC's agenda to include issues related to the role of climate change as a threat multiplier, represent an attempt to frame a topic as an urgent and imminent threat that foresees alternative approaches to be successfully addressed. However, this measure is far from being universally accepted by the audience (as the securitization process demands). Indeed, within the UN there are different contrasting opinions regarding the

broadening of the UNSC competences, particularly regarding climate change and its impacts. As mentioned earlier, if climate induced displacement was to fall within the UNSC's competences, the outcome of the debates could be biased by the influence of the P-5 and their personal interests, potentially limiting the active involvement of Member States that are most affected by climate change impacts.

Furthermore, in the analyzed documents I have detected recurring reference to measures that are based on a human-security approach. Particularly, the UN actors have displayed preferences over preventive measures focused on long-term goals, with adaptation and resilience programs to be developed in cooperation with other countries, instead of reactive procedures which can promptly address the emergency in the short term, but they do not focus on providing durable solutions addressing the roots of the issue. A human security-based approach ensures that the conversation around climate-induced displacement is not solely driven by concerns related to the protection of the State and its citizens, but also by the imperative to safeguard human rights and promote sustainable development.

Leaning towards a human security-based approach, rooted in international cooperation, could have important implications for the legal recognition of climate refugees too. The transnational nature of climate change determines that its impacts do not affect specific countries only, but they could represent a threat also for countries that are not directly affected by extreme climate events, as it was represented through the example of the EU in the case of climate induced displacement. According to the analysis conducted by proff. Jane McAdams and Ben Saul, human security could represent a principle collectively invoked to justify action to provide protection to the most vulnerable individuals, regardless of their citizenship²⁶⁹. However, this possible pathway presents some limitations too, as it could interfere with the sovereignty of States, as well as being dominated by the interests of more powerful states. Moreover, an excessive focus on addressing exclusively the "root causes" of climate displacement, such as reducing greenhouse gas emissions and respecting climate change policy obligations, does little to provide immediate solutions for those that are already displaced. While reducing the

²⁶⁹ J. McAdams & B. Saul, *An Insecure Climate for Human Security? Climate-Induced Displacement and International Law*, University of New South Wales Faculty of Law Research Series, Paper 59, 2010

impact of climate change is crucial for building long-term resilience, displaced people need legal and humanitarian frameworks to protect their rights and receive practical support in the very near future.

On the other hand, the EU presents a strategy which shows a growing level of securitization for the phenomenon of migration in general, and climate change is gradually being incorporated in such a securitized strategy. The framing of climate change as a “threat multiplier” in the 2009 EU Security Strategy marks the shift to include non-traditional security threats, such as climate change, into security frameworks. This strategy is characterized by the prevalence of crisis management instruments, with the open possibility to resort to military interventions in case of disasters determined by climate change. While this determines, surely, a renewed interest for the impacts of climate change, the preference over short-term solutions, such as crisis response, could overshadow the possibility to build adaptation and resilience measures, as well as addressing root causes of climate-induced displacement. The middle-phase of the EU’s strategy is characterized by a shift from a State-security based approach to a human security-based one concerning climate change issues. Preventive rather than reactive initiatives, a particular focus on human rights violations and collaborations with civil society are prevalent in this strategy. Climate change continues to be defined as a “threat multiplier.” However, this shift occurred during the peak of the 2015–2016 European migration crisis, when the EU faced unprecedented numbers of refugees and irregular migrants, many fleeing conflict zones like Syria.²⁷⁰ Border controls were tightened, and the EU's external borders were militarized to prevent irregular migration, leading to the construction of the so-called “Fortress Europe.” The crisis led to a shift in the EU’s migration policies, with increased securitization and stricter asylum regulations, such as the reformation of the Dublin Regulation and the general externalization of reception measures, determining increased deterrence and repatriations.²⁷¹ The narrowing of asylum-seeking measures further complicates the implementation of the hypothesis of expanding protection mechanisms to include individuals persecuted by the effects of climate change.

²⁷⁰ supra note (76)

²⁷¹ supra note (76)

To summarize, the EU and the UN are two nuanced examples of how the issue of climate-induced displacement has been embedded in the security framework. The differences in framing or non-framing, as climate-induced displacement was not explicitly addressed through specific policies, show the influence of different political sensitivities on such an issue.

4TH CHAPTER

CASE STUDY: Pacific Island Countries/New Zealand

4.1 Background information on Pacific Island Countries (PICs)

Even though the Pacific region comprises of different territories, independent countries and larger countries with pacific coastlines (such as Australia and New Zealand), for the purposes of my analysis I will be referencing 14 countries, that are usually addressed with the term Pacific Island Countries (PICs), and they are: Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, Niue, Papua New Guinea, Palau, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu. Each country presents a distinct language, set of traditions and development level, although they share similar historical and cultural ties. In this analysis they will be treated as a group, even if they are not economically or politically homogeneous. According to the IPCC report of 2022, they share “*geographical remoteness, isolation, narrow resource bases, heavy dependency on external trade, vulnerability to exogenous economic shocks, economic volatility, and limited access to development finance*”.²⁷²

Most of the Island States in the Pacific region are classified as developing or underdeveloped States. Their economies rely heavily on subsistence farming and fishing, as well as on tourism, especially for the territories of Fiji and Palau. Furthermore, remittances from overseas workers are, also, a great source of income for Pacific Islanders. Particularly, remittances from abroad workers accounted for at least 10% of GDP in four countries in this region, including 37.6% of the island of Tonga’s GDP in 2019, which is the highest of any country in the world.²⁷³ According to Fiame Naomi Mata’afa, Samoa’s Deputy Prime Minister and Minister of Natural Resources and the Environment and spokesperson of the Pacific Islands Forum:

²⁷² IPCC, *Sixth Assessment Report*, Chapter 15 “Small Islands”, 2022, available at: [link](#)

²⁷³ IOM, *Pacific Migration Common Country Analysis*, 2021, available at: [link](#)

“one in every four Pacific Islander is living below national basic needs poverty lines²⁷⁴”. Rates of unemployment are very high, particularly among women and young people.²⁷⁵

The populations of such territories vary considerably: some countries like Papua New Guinea have around 9 million of inhabitants, while countries like Kiribati and Tuvalu have a population of less than 15.000 people²⁷⁶. Despite small population numbers, there are places in the Pacific that have some of the highest population densities in the world, such as Ebeye in the Marshall Islands and South Tarawa in Kiribati.²⁷⁷

The Pacific Island Countries are described as one of the most vulnerable groups to the effects of climate change²⁷⁸. These islands are particularly sensitive to rising sea levels: according to the IPCC, Pacific Island States will likely experience impacts of sea-level rise (SLR) and extreme sea level rise (ESL), events such as coastal storm surges and coastal flooding more frequently in the coming decades. Pacific Islands are interested differently by the gravity of such events depending on their elevation from the level of the sea. Furthermore, the IPCC expresses an overarching concern regarding the reduction of the habitability conditions of such territories.²⁷⁹

The socio-economic struggles in the development of the small pacific islands are to be understood without forgetting the colonial exploitation of local resources that these territories suffered until the 1980s, when most of them acquired independent status (Niue, technically, is still not an independent state since it is in self-government in free association with New Zealand). Furthermore, exploitation activities pursued by colonial States are also considered, at least partly, responsible for contributing to the environmental degradation of the territories of the Pacific Islands, additionally exacerbated by the effects of climate change.²⁸⁰

²⁷⁴ UN News, <https://news.un.org/en/story/2019/07/1042161>

²⁷⁵ *ibid.*

²⁷⁶ *ibid.*

²⁷⁷ *ibid.*

²⁷⁸ *ibid.*

²⁷⁹ *supra* note (1)

²⁸⁰ B. Wardhani, “*The Legacy of Colonialism and Ecological Genocide on Indigenous People of Nauru*”, *Andalus Journal of International Studies*, Vol 12, No 1, 2023

4.2 Different patterns: migration vs displacement

Pacific Islands have been defined as one of the most mobile groups of the world. Migration as an adaptation and mitigation strategy has been used frequently to diversify livelihoods, in the past, as a response to environmental risk, as well as for cases of forced migration in colonial times. Moreover, migration has been used as a proactive response to environmental risks, moving to sustain livelihoods and economic opportunities. For these reasons, migration patterns are rather well established within Pacific islands national plans, which is also sometimes considered necessary by some Pacific islands' communities for sustainability reasons.²⁸¹

However, the higher frequency of extreme events determined by climate change has turned voluntary displacement into forced displacement, dictated either as a response to disasters or due to the gradual environmental degradation of the local territories. According to the UN's high-level panel on internal displacement, every year more than 50,000 people in the Pacific are forced to flee their homes because of the devastating impacts of disasters and climate change.²⁸² Due to the rising number of extreme climate events, and the consequential forced displacement of more and more individuals in the Pacific Islands, there is the need to frame such a phenomenon in the regional legal framework.

4.3 Legal instruments for migration and displacement in the Pacific

As mentioned in the previous chapter, Pacific Islanders had been subjected to voluntary displacement even before climate change impacts would pressure them into moving out of their countries. Beside temporary or seasonal migration schemes, the Pacific Islands can dispose of three main migration channels: trans-Tasman migration between New Zealand and Australia, which includes many migrants that are originally from the Pacific; migration from PICs to countries on the Pacific Rim (especially New Zealand, Australia,

²⁸¹ supra note (2)

²⁸² United Nations, Pacific Regional Consultation on Internal Displacement, February 11, 2021 at 7h Geneva / 13h Bangkok / 18h Suva, available at: [link](#)

the United States and Canada) and a significantly smaller flow of migration happen among the different Pacific Island states and territories²⁸³.

Currently, there are in place some schemes to regulate and monitor cross-country migration towards countries on the Pacific Rim: due to time and space limitations of my research, I will be focusing on those that are offered by New Zealand, which is the one nation in the Pacific region that offers most legal pathways for Pacific Islanders to migrate towards its territories. Moreover, New Zealand's legal system offers the most in-depth analysis to date regarding the scope and nature of protections available to individuals fleeing the impacts of climate change and disasters.²⁸⁴

4.3.1 New Zealand immigration and asylum system

The Cook Islands, Tokelau, and Niue have unrestricted access to New Zealand for living and working. Additionally, a limited number of Pacific Islanders from Tonga, Fiji, Kiribati, and Tuvalu can obtain permanent residency in New Zealand through the Samoan Quota (SQC) and Pacific Access Category (PAC) schemes²⁸⁵. Despite some common misconceptions, these quotas are not measures to protect people who are at risk of displacement or displaced by climate change events²⁸⁶, but they represent immigration policies designed to attract skilled workers from the Pacific Islands of Samoa, Tonga, Tuvalu, Kiribati, and Fiji to New Zealand. Indeed, eligible applicants need to respect age limitations (18-45 years), as well as minimum income requirements (paired with evidence of a current offer of full-time work that is for 12 months or more), satisfying health conditions and a good knowledge level of the English language.²⁸⁷ These initiatives aim to offer an opportunity for Pacific Islanders to diversify their livelihoods and find better employment or education opportunities, but they do not address the protection needs of

²⁸³ supra note (2)

²⁸⁴ J. McAdams, *The emerging New Zealand jurisprudence on climate change, disasters and displacement*, Migration Studies, Vol 3, Number 1, pp. 131-142, 2015

²⁸⁵ R. Chandra Ghosh & C. Orchiston, *Climate-induced Migration in the Pacific: The Role of New Zealand*, NZAIA, pp. 27-29, January 2021, available at: [link](#),

²⁸⁶ supra note (12)

²⁸⁷ New Zealand Immigration, *Pacific Access Category Resident Visa*, available at: [link](#)

climate refugees. Moreover, The PAC and SQC offer very limited opportunities²⁸⁸. Demand is much higher than supply, as in 2019 12,000 applications were received, compared to the 650 quotas available, and at the same time many inhabitants of the Pacific Islands States have stated that they cannot financially afford to relocate from their home territory (only 25% of inhabitants from Tuvalu and Kiribati believe to have the financial means needed to sustain migration costs).²⁸⁹

With respect to legal measures for displacement, New Zealand does not have any specific laws or regulations which explicitly address the protection of people that are displaced by the effects of climate change. New Zealand has signed and ratified the 1951 Geneva Refugee Convention, which is incorporated into domestic law through the Immigration Act of 2009. The definition of refugee which is enclosed in the Immigration Act mirrors the one of the 1951 Geneva Convention. This implicates that asylum protection for individuals coming to New Zealand is granted if an individual is facing persecution and/or well-founded fear of persecution on the grounds of race, religion, nationality, membership of a particular social group or political opinion, and due to such fear/active persecution is unwilling to receive protection from their own country and is, as well, unable to go back to their home country.²⁹⁰ As it was previously analyzed in Chapter 2, this definition of refugee does not include individuals that are displaced by the impacts of climate change. In Chapter 2, I also discussed the possibility to broaden the interpretations regarding the extended meaning of the concepts of “*persecution*” or “*particular social group*”, as to include environmental degradation as a factor of persecution which affects a particular group. However, they have not been acknowledged by the Court of New Zealand yet²⁹¹.

²⁸⁸ UN Economic and Social Commission for Asia and the Pacific, *Climate Change and Migration in the Pacific: Links, attitudes and future scenarios in Nauru, Tuvalu and Kiribati*, Report, 2015, cited in: L. Fiennes, *New Zealand's Climate Refugee Visa, a Framework for Positive Change: Creating a regional framework of protections for climate migrants from the Pacific*, Final Dissertation at the University of Otago, New Zealand, October 2019

²⁸⁹ *ibid.*

²⁹⁰ New Zealand, *Immigration Act*, section 129(1), 2009, available at: [link](#)

²⁹¹ L. Fiennes, *New Zealand's Climate Refugee Visa, a Framework for Positive Change: Creating a regional framework of protections for climate migrants from the Pacific*, Final Dissertation at the University of Otago, New Zealand, October 2019

New Zealand has also signed and ratified the ICCPR and ICESCR, successfully incorporating them into its domestic legal framework. In Chapter 2, I have discussed how human rights law can presuppose alternative legal pathways to the 1951 Refugee Convention for the protection of the human rights of those displaced by climate change. However, possible violations of *Right to life* (Art 6 of ICCPR) and *Right not to be subjected to cruel, inhuman or degrading treatment or punishment* (art 7 of the ICCPR) applied to climate refugees, are applicable on exceptional cases only, where the threat to the individual's life or well-being is extreme and immediate, and if there is not a margin for adaptation nor for home State intervention. These provisions were mentioned in the famous case of *Teitiota v. New Zealand*, which was ruled by the HRC, and eventually the refugee claims of the applicant were deemed as non-admissible.²⁹²

Considerations of possible implications of climate change impacts on patterns of displacement for Pacific Islanders has been growing considerably in the last few years, due to the increasing relevance of case law. Since the 2000s, New Zealand has been dealing with numerous cases of people applying for refugee protection due to forced displacement determined by environmental degradation, but they have all been dismissed by the New Zealand Court.²⁹³ However, the importance of case law in raising awareness on such a topic, as well as contributing to State practice, is very evident in the case of New Zealand. Three cases were crucial to strengthen the relationship between human rights enjoyment and the environment, and to make the New Zealand's court acknowledge such affiliation.

The first case is the *AF (Kiribati) case*, decided in 2013. This case involved a family originally from the Island State of Kiribati, who claimed to be recognized as refugees on the basis of changes to their environment in Kiribati caused by sea-level-rise associated with climate change.²⁹⁴ They sought protection under humanitarian grounds, partly linked to the effects of climate change. The appellants asked to be recognized as refugees under

²⁹² see Chapter 2, pp. 30-41

²⁹³ see: *Refugee Appeal No 72185* [2000] NZRSAA (10 August 2000), *Refugee Appeal No 72186* [2000] NZRSAA 336 (10 August 2000), *Refugee Appeal Nos 72189–72195* [2000] NZRSAA 355 (17 August 2000), *Refugee Appeal Nos 72179–72181* [2000] NZRSAA 385 (31 August 2000), *Refugee Appeal No 72313* [2000] NZRSAA 491 (19 October 2000), *Refugee Appeal No 72314* [2000] NZRSAA 492 (19 October 2000), *Refugee Appeal No 72315* [2000] NZRSAA 493 (19 October 2000), *Refugee Appeal No 72316* [2000] NZRSAA 464 (19 October 2000) as cited in: Library of Congress, *New Zealand: 'Climate Change Refugee' Case Overview*, available at: [link](#)

²⁹⁴ New Zealand Immigration and Protection Tribunal, *AF (Kiribati)* [2013] NZIPT 800413, pp. 6-9

the 1951 Convention Relating to the Status of Refugees (section 129 of the Immigration Act), and as protected persons under the 1984 Convention Against Torture (section 130) as well as under the ICCPR (section 131, *right to life*).²⁹⁵ The New Zealand Immigration and Protection Tribunal acknowledged the vulnerabilities of Kiribati due to climate change but ruled that the appellants' situation did not meet the legal threshold for refugee or protected person status. Indeed, the Tribunal found that Kiribati through the National Adaptation Programme of Action (NAPA), in place since 2007, was taking all the steps it could to address the impacts of climate change against its population well-being²⁹⁶. The Tribunal concluded that the appellants did not face a real risk of persecution or serious harm based on environmental conditions alone. The impacts of climate change, while severe, were seen as affecting the population as a whole, rather than singling out the appellants for individualized harm that would justify protection under the 1951 Refugee Convention or New Zealand's legal frameworks for protection.²⁹⁷ As for the alleged violation of section 131, the Court established that there was no violation of such right as the appellants couldn't point out any specific action which the Government of Kiribati was doing (or not doing) to mitigate the effects of climate change on the enjoyment of their rights²⁹⁸, and also, they couldn't demonstrate a sufficient degree of risk, which has to be "imminent".²⁹⁹

Another case sparked some interest in the particular effects of climate change: the *AD (Tuvalu)* case, decided in 2014, involved a Tuvaluan family that appealed after being denied resident visas in New Zealand. The claimants argued that their deportation back to Tuvalu would expose them to the adverse effects of climate change, including environmental degradation and the increased risk of natural disasters.³⁰⁰ Eventually, even though the judges recognized the potentiality of climate change impacts to compromise the enjoyment of human rights, also citing the past case of *AF (Kiribati)* as a proof of the possible impact of climate change effects on human rights³⁰¹, the claimants were granted

²⁹⁵ *ibid.* para. (36), p. 10

²⁹⁶ *ibid.* para (6), p.2

²⁹⁷ *ibid.* para (75), p. 20

²⁹⁸ *ibid.* para. (88), p. 23

²⁹⁹ *ibid.* para. (89), p 23

³⁰⁰ New Zealand Immigration and Protection Tribunal, *AD (Tuvalu)* [2014] NZIPT 501370-371.

³⁰¹ *ibid.* para. (28), p. 7

the possibility to remain in New Zealand and to extend their visa not as “climate refugees”, but due to exceptional humanitarian circumstances³⁰². These were determined by close family ties with New Zealand (the husband’s extended family was living in New Zealand), the family's strong integration into New Zealand society, and the best interests of the children, who had grown up and been educated in New Zealand³⁰³. This case was significant because, similarly to the *AF (Kiribati)* one, it highlighted the issue of climate-induced displacement, even though it did not establish a direct legal precedent for granting protection solely based on the threat of climate change.

The ruling on *Teitiota v. New Zealand*, even though unsuccessful, contributed greatly to raising awareness globally regarding the difficulties of people living in the Pacific Islands territories in dealing with the dangerous impacts of climate change. Moreover, a dissenting opinion on the case, stated that if risk factors that had been presented by the claimant had been considered cumulatively, it could have been possible to demonstrate a "real risk of irreparable harm" sufficient to trigger New Zealand’s non-refoulement obligations.³⁰⁴

The cases of *AF (Kiribati)*, *AD (Tuvalu)*, and *Teitiota v. New Zealand* illustrate how New Zealand's courts have grappled with the intersection of climate change, human rights, and migration. While none of these cases established a clear legal precedent for recognizing climate refugees, they have been instrumental in highlighting the humanitarian concerns surrounding climate-induced displacement.

As much as case law is important, expanding the interpretation of domestic laws is equally so, highlighting the need to adapt to a context that requires an urgent response to this issue. In this regard, according to scholars such as Doug Tennent³⁰⁵, section 207 of the Immigration Act could be interpreted in favor of people fleeing from the impacts of climate change. The passage recites as follows:

³⁰² *ibid.* para. (30), p.8

³⁰³ *ibid.* para. (19-26), pp. 6-7

³⁰⁴ See Chapter 2, pp. 40

³⁰⁵ D. Tennent, K. Armstrong and P. Moses, *Immigration and Refugee Law* (3rd ed, LexisNexis, Wellington, 2017)

(1) *The Tribunal must allow an appeal against liability for deportation on humanitarian grounds only where it is satisfied that:*

- (a) *there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported from New Zealand; and*
- (b) *it would not in all the circumstances be contrary to the public interest to allow the appellant to remain in New Zealand.*³⁰⁶

According to Doug Tennent, this provision could potentially broaden the principle of non-refoulement for individuals that have been displaced by climate change impacts, if humanitarian circumstances were extremely severe. In this case, the affected individual would have to demonstrate the specific negative impacts on their persona if they were deported back to their home country³⁰⁷. Tennent argues that protection on humanitarian grounds may be justified if rising sea levels would submerge large areas of land and if there were no realistic alternatives for securing housing or employment in other regions.³⁰⁸

Section 207 of the Immigration Act appears to be the most viable option within New Zealand's national legal system for people fleeing the effects of climate change. However, the criteria that must be met to trigger the non-refoulement obligation are very high: waiting until the environmental degradation is severe enough to activate the protection mechanism would be a reactive measure, whereas proactive action may be more effective and respectful for Pacific Islanders.

The domestic legal pathways which have been developed by New Zealand have to be framed into the particular security strategy that the country has adopted over the last few years. Despite the declared openness of the country to potentially include more Pacific Islanders within their country borders through the project of the “*experimental humanitarian visa*”, New Zealand’s immigration policies have been leaning towards a more securitized strategy over the last few years, reflecting broader security trends which

³⁰⁶ Immigration Act 2009 (NZ), s 207, para. 1

³⁰⁷ D. Tennent, K. Armstrong and P. Moses, *Immigration and Refugee Law* (3rd ed, LexisNexis, Wellington, 2017), at 336, as cited in: L. Fiennes, *New Zealand’s Climate Refugee Visa, a Framework for Positive Change: Creating a regional framework of protections for climate migrants from the Pacific*, Final Dissertation at the University of Otago, New Zealand, October 2019

³⁰⁸ *ibid.*

have been spreading all over Western and West-aligned countries since 9/11³⁰⁹. Indeed, past governments have been investing in advanced technologies and established comprehensive screening protocols in order to better manage migration flows and enhance national security. However, unlike countries like Australia and the U.S., New Zealand has maintained a delicate balance between national security and its obligations under international refugee law, ensuring that asylum procedures would be carried out in the respect of human rights.³¹⁰ The New Zealand National Party-led government which lasted from 2008 to 2017, brought great changes to the resettlement system of refugees coming to New Zealand, particularly targeting individuals coming from Africa and the Middle East, who, despite being prioritized by the UNHCR strategy, accounted for a very small quota of the individuals that had been granted refugee status by New Zealand. These selective policies raised some concerns regarding possible feelings of xenophobia and discrimination against Muslim asylum seekers³¹¹.

The securitized approach in New Zealand has become even more relevant following the terrorist attacks in the city of Christchurch in 2019, where a white supremacist killed +50 Muslim individuals. The events profoundly shocked the country, and it showed how, even if the country has a relatively remote geographical position, it's not spared from the hatred feelings against migrant communities which are, unfortunately, more and more common all over the world³¹².

Starting from 2017 up until now, the Labor Party has succeeded the National Party in leading the country, bringing some innovations in the approach towards immigration and asylum. In 2020, the country's refugee quota has been raised from 1.000 to 1.500 individuals annually³¹³, and the focus shifted away from the restrictive policies targeting refugees from Africa and the Middle East seen under the previous National government. While security screenings remain relevant and widespread measures to control migration,

³⁰⁹ N. Salahshour, *Representation of Immigrants in New Zealand Print Media: A Critical Discourse Analysis*, Doctor of Philosophy Thesis, Victoria University of Wellington, New Zealand, 2017

³¹⁰ *ibid.*

³¹¹ *ibid.*

³¹² L. Planas Gifra, *Migration, Security, and Politics: The Role of Politics in Securitized Migration*, *Migration Letters*, Volume: 21, No: 3, pp. 849-859 ISSN: 1741-8984 (Print) ISSN: 1741-8992 (Online), 2024

³¹³ Parliamentary Service, *The New Zealand Refugee Quota: A snapshot of recent trends*, August 2020

there is now a greater emphasis on humanitarian obligations and regional support, including climate-induced displacement from the Pacific Islands, perceived as a “*collective responsibility*” which New Zealand is willing to take³¹⁴.

In conclusion, while some of New Zealand's measures to manage migration fall under the State security dimension, particularly in the last 10 years, the Country has been demonstrating an approach which leans more towards human security concerns. The country will likely experience increased migration flows from the Pacific Islands due to climate change, it will be up to New Zealand to choose a security approach that does not carry over the stigma of migration but prioritizes the protection of human rights.

4.4 Planned resettlement, adaptation & ways forward

After describing the potential legal pathways which are available in the host State for people fleeing from the Pacific Island States, it is important to acknowledge the point of view of the people that are actively affected by these circumstances. While I have discussed possible alternatives for Pacific Islanders to find protection in the host countries due to deteriorating environmental conditions, for some natives the first preference is *to not move at all*³¹⁵. This is one of the reasons why the 2017 project of the “experimental humanitarian visa” proposed by then Minister for Climate Change, James Shaw, failed in its implementation.³¹⁶ The visa would have allowed 100 people from Pacific Island nations to grant permanent residence in New Zealand, with the condition to demonstrate a “*genuine fear of permanent displacement due to environmental changes or damage caused by climate change*”.³¹⁷ The initiative did not have a clear method for implementation, as there was not a well-defined threshold for “genuine fear”, as well as the selection method for individuals that could benefit from the visa wasn’t precisely outlined. In 2018, indeed, the project was shelved by the new government as part of its “Pacific Reset” strategy, citing the need to assess its necessity, develop culturally

³¹⁴ www.guardian.com

³¹⁵ supra note (2), p.18

³¹⁶ H.Dempster and K. Ober, *New Zealand's "Climate Refugee" Visas: Lessons for the Rest of the World*, Centre for Global Development, 2020, available at: <https://www.cgdev.org/blog/new-zealands-climate-refugee-visas-lessons-rest-world>

³¹⁷ *ibid.*

sustainable policies, and improve outcomes for Pacific migrants³¹⁸. Nevertheless, the “humanitarian visa” had not been well received by the Pacific Islands communities³¹⁹.

For many Pacific Island communities, their home countries are more than simply a geographical connection, while the land is perceived as deeply intertwined with their identity, culture, and spirituality. According to dr. Jane McAdams’ research, the land represents more than a place to live for Pacific Islanders, as it holds historical, ancestral, and spiritual significance that is fundamental to their social structure and sense of belonging³²⁰.

For these reasons, in situ adaptation and resilience-building measures are the preferred options for many communities in the Pacific Islands, as to ensure that they can maintain their connection to the land as long as possible.³²¹ Moreover, opting for adaptation strategies in the local territories should be paired with the involvement of local communities in these procedures, empowering them to take part in the decision making process, and to find the best alternative for their specific needs.³²² In this regard, developing strategies based on consensual and informed “organized resettlement”³²³ of local communities to other territories, could be a valid option to safely relocate and, at the same time, restore satisfying living standards for affected populations. However, this option remains still little explored since there is not much precedent for resettlement due to adverse impacts of climate change, and at the same time, the potential strategy should be established through careful planning, so as not to cause shock of various kinds to the migrant population.³²⁴

The Pacific Islands communities share a preference toward measures that take into account the preservation of the culture of the community moving to a new territory.

³¹⁸ *ibid.*

³¹⁹ *ibid.*

³²⁰ J. McAdams, *Climate Change, Forced Migration, and International Law*. Oxford University Press, 2012.

³²¹ *supra* note (2) p. 18

³²² *supra* note (2), p. 10

³²³ J. McAdams and E. Ferris, *Planned Relocations in the Context of Climate Change: Unpacking the Legal and Conceptual Issues*, Cambridge Journal of International and Comparative Law 137, UNSW Law Research Paper No. 19-35, 2015

³²⁴ *ibid.*

Forced displacement is seen as a process in which the specific cultural features of a population could go lost, thus forced displacement is perceived as the last option available³²⁵.

The shared perspective on such matters among Pacific Islanders implies that nations that are big producers of greenhouse emissions should put mitigation measures and the respect of climate goals as priorities in their strategy, in order not to worsen an already complex situation for Pacific Islanders. Their approach is based on the concept of climate (in)justice which was presented in the previous chapter³²⁶, implying that nations that are the most affected by the dangerous effects of climate change are, very often, those who least contributed to its deterioration, thus it is the ultimate duty of nations who, instead, are major contributors to climate change, to actively reduce their impact.

The concept of climate justice has been guiding Pacific Island States in their advocacy activities within international bodies, such as the United Nations, as mentioned in the previous chapter³²⁷. Recently, in 2023, the State of Vanuatu began a proceeding to request an advisory opinion of the ICJ regarding States' obligations to climate change, as well as the consequential legal implications “*for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment*”³²⁸. Through the request for the advisory opinion, they also wanted to inquire regarding the possible legal implications for States, such as small islands, which had been particularly affected by the negligence of States in addressing climate change impacts. In March 2023 the initiative was welcomed by the UN General Assembly, which voted positively over the possibility of an advisory opinion of the ICJ on the matter. The initiative could be particularly relevant in solidifying the international law principle of “*common but differentiated responsibility*”, which implies that all States are responsible for addressing global environmental deterioration, yet not equally responsible, as they are impacting climate change differently³²⁹. This could potentially determine legal

³²⁵ supra note (39)

³²⁶ see Chapter 3, para. 3.2.3 “*The Critical approach*”, p.7

³²⁷ see Chapter 3, para. 3.3.1 “*The United Nations*”, p. 14

³²⁸ International Court of Justice, *Request for Advisory Opinion Transmitted to the Court Pursuant to General Assembly Resolution 77/276 of 29 March 2023: Obligations of States in Respect of Climate Change*, UN General Assembly, A/RES/77/276 (2023), p. 2.

³²⁹ <https://www.britannica.com/topic/common-but-differentiated-responsibilities>

responsibilities for those who are creating the most harm from climate change, and justice for those that have been the most affected.

It is mandatory for future host nations to own their responsibility in planning a shared strategy which involves the needs of the host country, as well as the ones of the affected communities. One “*migration with dignity*”³³⁰ plan of action which aims to respect the cultural identities of those who will choose to move, and those who won’t have any other alternative.

³³⁰ supra note (39)

CONCLUSIONS

Climate change has emerged as one of the most urgent and defining challenges of our time, with profound implications for ecosystems, economies, and human lives. Rising global temperatures, extreme weather events, and environmental degradation are reshaping our planet as we know it, and how it will be for the next generations will be dictated by how the current generation will be able to be accountable for the damages that it has created.

Through this research I aimed to verify the adaptability of existing international legal frameworks in broadening their interpretation as to urgently address the current issue of climate-induced displacement, and how to provide protection for those who are forced to flee. Among the ones that have been analyzed, no specific legal instrument, as how it currently is articulated, could be suitable to correctly address the gradual and multicausal nature of climate change. Unlike traditional refugee movements, climate displacement often occurs slowly, over time, making it more complex to frame under existing legal provisions which require imminency in the violation of human rights, as to trigger protection mechanisms.

However, some improvements have been made in the interpretation of international human rights conventions, such as the International Covenant for Civil and Political Rights and the International Covenant for Economic and Social Rights. Particularly, the broaden interpretation of their articles have been crucial in the establishment of several cases regarding climate refugees, which have been significantly contributing to spreading awareness on the plight of individuals that are displaced by climate change impacts, as well as conveying the urgency to fill the legal gaps to address their specific situations. In my research I also found that some regional frameworks could potentially expand the traditional definition of refugee to include climate refugees, such as the non-binding Cartagena Declaration (1984) and the OAU Refugee Declaration (1969). However, their potential broader interpretation is bound to the political will and domestic policies of the individual States which are contracting part of such conventions.

Moreover, case-law can enhance State practice and create important precedents for the judgment of future cases. Indeed, the landmark case of *Teitiota v. New Zealand* (2015) represented, and still represents as of today, a great achievement in expanding protection mechanisms to people that have been displaced due to climate change impacts. Even though the case wasn't successful in granting asylum to the applicant, it allowed for a broader interpretation of the right to life, suggesting that it could be possible to extend non-refoulement obligations to people that have been displaced by climate change impacts, particularly if their home countries cannot adequately ensure their safety.

Legal advancements in addressing climate-induced displacement are contingent upon the political will of states to acknowledge and act on the issue. The close relationship between legal systems and political institutions can strongly influence one another, and this was shown through the concept of securitization applied to climate-induced displacement, in Chapter 3. Western administrations, such as the US or the EU, have been considering climate change and migration as pressing security threats on their agendas, to be framed under a State-security based strategy. This approach has determined a general heightening in the strict controls over migration, often opting for militarized measures at the borders, and a shared preference for short-term emergency initiatives, which do not efficiently address the root causes of displacement nor of environmental deterioration.

An approach which is based on the concept of human security, however, could be more useful to successfully include the human rights of climate refugees under protection mechanisms. In my research I assessed that the UN has been dealing towards this strategy over the last few years, favoring adaptation and resilience building measures so that a long-term solidarity net can be built for the populations most vulnerable to the effects of climate change. However, UN is constrained by the willingness of the States to implement these provisions in their national territories, instead of applying security exclusively within their own borders, particularly for those who are destination countries. Additionally, debates regarding sovereignty issues are possible.

These factors furtherly complicate the improvements in establishing progressive and omni comprehensive legal measures, which can correctly include individuals that are displaced by climate change impacts: in my research I found that, through the framing (or non-framing, as displacement dictated by climate change has not always been explicitly

and willingly acknowledged by State actors) of such a phenomenon under specific security strategies, the human rights protection of climate refugees can be perceived and addressed to in very different ways.

Through my work, I aimed to voice the point of view of individuals that have been personally affected by the damaging impacts of climate change, such as the communities of the Pacific Island Countries. Their strong attachment to their native territory, paired with the long-lasting capability to use migration as an adaptation strategy, are determinants in their preferred choice of not wanting to leave their islands at all. Their advocacy work in the international community is remarkable and recognized, as it is proven by the UN General Assembly's positive vote on their initiative to receive an advisory opinion from the ICJ regarding State's obligations over climate change issues. If migration would be a necessary survival strategy for Pacific Islanders, the concept of "*migration with dignity*" is crucial. As rising sea levels and environmental degradation threaten their homelands, it is fundamental to develop migration strategies that respect their cultural identities and ensure their survival with dignity, whether they choose to move or are forced to relocate. Host nations must develop comprehensive, humane strategies to address these needs, ensuring that displaced communities are integrated into new environments while preserving their cultural heritage.

An interesting concept which positively integrates with the concept of climate justice, and which could constitute a valid progressive pathway for the legal framing of climate refugees, could be the one of "*ecological vulnerability*", as explained by professor Francesca Ippolito³³¹.

Vulnerability in this context refers to the heightened risk that people displaced by environmental factors face due to the deterioration of their natural surroundings. The application of such a concept could reshape the legal approach to environmental refugees, encouraging courts and policymakers to take their specific risks into account when assessing protection needs. Indeed, ecological vulnerability could represent a great tool to expand the scopes of non-refoulement, even including long-term environmental

³³¹ F. Ippolito, *Environmentally Induced Displacement: When (Ecological) Vulnerability Turns into Resilience (and Asylum)*, *International Journal of Law in Context* (2024), 20, 74–91

threats, instead of focusing exclusively on imminent risks³³². Related to this concept, in my research I covered the case of *Daniel Billy and others v. Australia*, which was ruled in 2020. The ruling of the case signaled a shift toward acknowledging that climate-induced displacement often results from prolonged environmental degradation rather than sudden disasters. This case was also fundamental to recognize that States have the duty to take proactive action versus climate change impacts even before that individuals under their jurisdictions are obliged to flee. This means that States are not mandated to mitigate immediate environmental risks, but they also must address their long-term obligations to prevent or minimize future harms related to climate change.

Additionally, an approach based on ecological vulnerability would also push States toward achieving "*just resilience*,"³³³ ensuring that the most vulnerable populations affected by climate change receive the protection and assistance that they deserve, under the form that best suits their specific needs. Furthermore, it is necessary to demand the involvement of the populations most affected by climate change in decision-making processes, so that their struggle can be narrated by people that are really experiencing it, without the risk to twist the narrative on climate-induced displacement to foster personal interests.

In conclusion, it is imperative to reinforce the urgent need for a collective and accountable global response that is able to actually address and take responsibility for the root causes of climate displacement, and at the same time that can ensure that those that are the most affected by climate change are not left to bear the brunt of a crisis they did not create.

³³² *ibid.*

³³³ *ibid.*

BIBLIOGRAPHY

Adger et alt., *This must be the place: Underrepresentation of identity and meaning in climate change decision-making*, *Global Environmental Politics*, Volume 11, Issue 2, Pages 1 - 25, May 2011

Arias S.B., *Who Securitizes? Climate Change Discourse Within the United Nations*, University of Pennsylvania, *International Studies Quarterly*, 66, 2022

Asderaki F. & Markozani E., *The Securitization of Migration and the 2015 Refugee Crisis: from Words to Actions*, in: Tziampiris, A., Asderaki, F. (eds) *The New Eastern Mediterranean Transformed*. Springer, Cham. 2021

Asylum Information Database (AIDA) and European Council on Refugees and Exiles (ECRE), *"Country Report: Introduction to the Asylum Context in Türkiye,"* last updated August 20, 2024, available at: <https://asylumineurope.org/reports/country/turkiye/introduction-asylum-context-turkiye/> (last accessed: 04/09/2024)

Atapattu S., *Climate change and displacement: protecting 'climate refugees' within a framework of justice and human rights*, *Journal of Human Rights and the Environment*, Vol. 11 No. 1, March 2020, pp. 86–113

Ayaziy H., & Elsheikh E., *"Climate refugees: The climate crisis and rights denied"*, Othering & Belonging Institute at UC Berkeley, 2019

Berglund M., *The Dilemma of Displacement: Dangerous or in Dire Need? A Framing Analysis of Securitisation with regards to Climate Change Induced Displacement (CCID) within the EU* (Master's thesis, Uppsala University, Department of Government, 2021)

Bettini G., *"Climate Barbarians at the Gate? A critique of apocalyptic narratives on 'climate refugees'"*, *Geoforum*, Volume 45, Pages 63-72, March 2013

Betts A., *Survival Migration: A New Protection Framework. Global Governance: A Review of Multilateralism and International Organizations* Vol. 16, no. 3 p. 361–382, 2010

Bose P., *Nexus dynamics: the impact of environmental vulnerabilities and climate change on refugee camps*, *Oxford Open Climate Change*, 2024, 4(1)

Brears R., *"Environmental Refugees from the Maldives: Are They Protected?"*, 2009, available at: <https://ssrn.com/abstract=1438822>

Brown L.R., *World Without Borders*, Vintage Books, 1976

Butros D., Brodén Gyberg V., and Kaijser A., *"Solidarity Versus Security: Exploring Perspectives on Climate-Induced Migration in UN and EU Policy,"* Environmental Communication 15, no. 6, pp 842-856, 2021

Buzan B., Wæver O., and De Wilde J.. *Security: A New Framework for Analysis.* Lynne Rienner Publishers. 1998

Calcaño N., *"Stuck in Limbo: Temporary Protected Status, Climate Migrants and the Expanding Definition of Refugees in the United States"* (2021). Honors Projects. 294.

Chandra Ghosh R. & Orchiston C., *Climate-induced Migration in the Pacific: The Role of New Zealand*, NZAIA, pp. 27-29, January 2021, available at: [link](#),

Council of the European Union: General Secretariat of the Council, *European Security Strategy – A secure Europe in a better world*, Publications Office, 2009, available at: <https://data.europa.eu/doi/10.2860/1402>

Crutchfield A. G., *Reframing the Response to Climate Refugees*, Documento de Trabajo, Serie Unión Europea y Relaciones Internacionales, Número 104 / 2020 (CEU Real Instituto Universitario de Estudios Europeos, Universidad San Pablo, 2020).

Doyle T. and Chaturvedi S., *'Climate Refugees and Security: Conceptualizations, Categories, and Contestations'*, in John S. Dryzek, Richard B. Norgaard, and David Schlosberg (eds), *The Oxford Handbook of Climate Change and Society* (2011; online edn, Oxford Academic, 6 Jan. 2012)

Duong T.T.V., *WHEN ISLANDS DROWN: THE PLIGHT OF "CLIMATE CHANGE REFUGEES" AND RECOURSE TO INTERNATIONAL HUMAN RIGHTS LAW*, Penn Carey Law: Legal Scholarship Repository, 2014

El-Hinnawi E., *Environmental Refugees*, Nairobi, United Nations Environmental Program, 1985

Fellendorf A. and Immer D., *The European Union's Responsibility to Protect Environmentally Displaced People and Their Position in the Common European Asylum System* (Research Paper, University of Groningen), pag 16, 2014

Ferris E. & Bergmann J. *'Soft law, migration and climate change governance'*, 8 Journal of Human Rights and the Environment 6-29, (2017)

Fiennes L., *New Zealand's Climate Refugee Visa, a Framework for Positive Change: Creating a regional framework of protections for climate migrants from the Pacific*, Final Dissertation at the University of Otago, New Zealand, October 2019

Fischel de Andrade J. H. , *The 1984 Cartagena Declaration: A Critical Review of Some Aspects of Its Emergence and Relevance*, *Refugee Survey Quarterly*, Volume 38, Issue 4, December 2019, Pages 341–362, doi:<https://doi.org/10.1093/rsq/hdz012> (last accessed: 12/08/2024)

Foster M., *Causation in Context: Interpreting the Nexus Clause in the Refugee Convention*, 23 *MICH. J. INT'L L.* 265 (2002).

Gleditsch N.P. (eds), *Conflict and the Environment*. NATO ASI Series, vol 33. Springer, Dordrecht, 1997

High Representative and the European Commission to the European Council, “*Climate Change and International Security*”, S113/08 14 March 2008

IOM, *Migration and Climate Change*, IOM Migration Research Series, no. 31, 2008

IOM, *Missing Migrants Project*, 2024, available at: <https://missingmigrants.iom.int/data>

IOM, *Pacific Migration Common Country Analysis* , 2021, available at: [link](#)

IOM, “*Glossary on migration*”, 2019. Available at: [link](#) (last accessed: 02/07/2024)

IOM, “*Regional report: highly vulnerable migrant flows and border mobility in Guatemala, Honduras, El Salvador, Costa Rica and Mexico*”, 2021

IPCC, *Climate Change: The IPCC Scientific Assessment*, Cambridge University Press, 1990. *Intergovernmental Panel on Climate Change* [Watson, R.T. and the Core Writing Team (eds.)]. Cambridge University Press, Cambridge, United Kingdom, and New York, NY, USA, 398 pp. 2001

IPCC, *Climate Change 2007: Synthesis Report*, based on a draft prepared by Lenny Bernstein et al., Valencia, Spain, November 12-17, 2007.

IPCC, *Sixth Assessment Report*, Chapter 15 “Small Islands”, 2022, available at: [link](#)

IPCC, *Summary for Policymakers*. In: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*

[Masson-Delmotte & others (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 3-24, 2018.

Ippolito F., *Environmentally Induced Displacement: When (Ecological) Vulnerability Turns into Resilience (and Asylum)*, *International Journal of Law in Context* (2024), 20, 74–91

Jacobson J. , *Environmental Refugees: A Yardstick for Habitability*, Worldwatch Paper No. 86, Washington, D.C., Nov. 1988

Jaldi A. and El Ouassif A., *Climate Refugees: A Major Challenge of International Community and Africa* (Research Paper, June 2022)

Kaim M. and Kempin R., “*Compass or Wind Chime? An Analysis of the Draft ‘Strategic Compass’ of the EU*”, in SWP Comments, No. 3/2022 (January 2022)

Karakay A.B., “*Who is a refugee? A critical assessment of the 1951 Geneva Convention*”, *Van Yüzüncü Yıl University the Journal of Social Sciences Institute*, 62, 173-184, 2023.

Keyes E., *Environmental Refugees? Rethinking What’s in a Name*, 44 *North Carolina Journal of International Law* 461 (2019).

Kibreab G., “*Environmental causes and impact of refugee movements: a critique of the current debate*”, *Disasters* 21(1): 20-38., 1997.

Kibreab G., “*Migration, environment and refugeehood*”. In: Zaba, B. and Clarke. J. (eds.) *Environment and Population Change*, Liège, Belgium: International Union for the Scientific Study of Population, Derouaux Ordina Editions, 115-29, 1994.

Krause U., “*Colonial roots of the 1951 Refugee Convention and its effects on the global refugee regime*”, *Journal of International Relations and Development* (2021) 24:599–626, 2021.

Luporini R., “*Climate Change Litigation before International Human Rights Bodies: Insights from Daniel Billy et al. v. Australia (Torres Strait Islanders Case)*,” *Dirpolis Institute* (Institute of Law, Politics and Development), Sant’Anna School of Advanced Studies, Pisa, Italy, published online 15 November 2023.

McAdams J. , *Climate Change, Forced Migration and International Law*, Oxford Press University, 2012.

McAdams J. , *The emerging New Zealand jurisprudence on climate change, disasters and displacement*, *Migration Studies*, Vol 3, Number 1, pp. 131-142, 2015

McAdams J. & Saul B., *An Insecure Climate for Human Security? Climate-Induced Displacement and International Law*, University of New South Wales Faculty of Law Research Series, Paper 59, 2010

McAdams J. and Ferris E., *Planned Relocations in the Context of Climate Change: Unpacking the Legal and Conceptual Issues*, Cambridge Journal of International and Comparative Law 137, UNSW Law Research Paper No. 19-35, 2015

McGregor J., “*Refugees and the environment*”. In Black, R. and Robinson V. (eds.) *Geography and Refugees: Patterns and Processes of Change* London: Belhaven, 157-70, 2001.

Meadows D.H. (and others), *The Limits to Growth*; a Report for the Club of Rome's Project on the Predicament of Mankind. New York: Universe Books, 1972.

Monteleone C., *Security and securitization: Copenhagen and beyond*. RAGION PRATICA, 2017(1), 9-24 [10.1415/86434], 2017

Myers N., “*Environmental Refugees*.” *Population and Environment*, vol. 19, no. 2, 1997, pp. 167–82. (last access: 1st July 2024).

P. Bargués, “*The EU Strategic Compass: A Blueprint for a European Defensive and Securitisation Policy*”, Joint Brief, No.16, March 2022

Pécoud A. & Piguet E., *Migration and Climate Change: An Overview*, *Refugee Survey Quarterly*, pp 2-23, 2011 IOM, *Migration Factsheet No. 2 – Migrants*, 2020, link: https://www.iom.int/sites/g/files/tmzbd1486/files/documents/migration_factsheet_2_migrants.pdf

Perrini F., *Il riconoscimento della protezione umanitaria in caso di disastri ambientali nel recente orientamento della Corte di Cassazione*, *Ordine Internazionale e Diritti Umani*, 2, pp. 349-362, 2021

Planas Gifra L., *Migration, Security, and Politics: The Role of Politics in Securitizing Migration*, *Migration Letters*, Volume: 21, No: 3, pp. 849-859 ISSN: 1741-8984 (Print) ISSN: 1741-8992 (Online), 2024

Portner H. (et. alt), *Climate Change 2022: Impacts, Adaptation and Vulnerability*. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V.

Möller, A. Okem, B. Rama (eds.)). Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 37–118, 2023

Ravenstein E.G., *The Laws of Migration*. Journal of the Statistical Society of London, 48, 167-235, 1885.

Regaud K.K. (et alt.), *Groundswell: Preparing for Internal Climate Migration*, World Bank, Washington DC, 2018.

Salahshour N., *Representation of Immigrants in New Zealand Print Media: A Critical Discourse Analysis*, Doctor of Philosophy Thesis, Victoria University of Wellington, New Zealand, 2017

Scheffran J. (et alt.) J. (eds) “*Climate Change, Human Security and Violent Conflict*”. Hexagon Series on Human and Environmental Security and Peace, vol 8. Springer, Berlin, Heidelberg, 2012

Semple E.C., *Influences of Geographic Environment*, New York, Henry Holt and Company, 1911.

Sommario E., *When climate change and human rights meet: A brief comment on the UN Human Rights Committee’s Teitiota decision*, 2013

Sowers J.L., E. Weinthal, M. Daoudy; *What is climate security? Framing risks around water, food, and migration in the Middle East and North Africa*, Wiley Interdisciplinary Reviews Water, 9(1), March 2022

Sperling J. & Webber M., “*The European Union: security governance and collective securitisation*”, West European Politics, 42:2, 228-260, 2019.

Tedenljung A., *Climate Change and Forced Migration: How Climate Refugees Fit into EU Asylum Law* (Master's Thesis, Uppsala University, Department of Theology, 2020) supervised by Patrik Bremdal.

Tennent D. ,Armstrong K. and Moses P., *Immigration and Refugee Law* (3rd ed, LexisNexis,Wellington, 2017)

Trombetta M.J., *Environmental security and climate change: analysing the discourse*, Delft University of Technology, Cambridge Review of International Affairs, Volume 21, Number 4, December 2008, Centre of International Studies

UNHCR, “*Handbook and Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection*” available

at: <https://www.unhcr.org/sites/default/files/legacy-pdf/5ddfcdc47.pdf> (last accessed July 25, 2024), p. 73, Geneva 2019 (reissued)

UNHCR, *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*, 1 October 2020

United Nations Advisory Group on Climate Change and Human Mobility, “*Human mobility in the context of climate change*”, UNFCCC Paris COP21, November 2015, p. 4

United Nations Economic and Social Commission for Asia and the Pacific, *Climate Change and Migration in the Pacific: Links, attitudes and future scenarios in Nauru, Tuvalu and Kiribati*, Report, 2015

United Nations General Assembly, Resolution adopted by the General Assembly: “63/281 *Climate change and its possible security implications*”, 11 June 2009, available at: <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/res%2063%20281.pdf>

United Nations General Assembly, “*Climate change and its possible security implications*”, A/64/350, 11 September 2009, Available at: <https://digitallibrary.un.org/record/667264?v=pdf>

United Nations Human Rights Council, “*Providing legal options to protect the human rights of persons displaced across international borders due to climate change*,” Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, Fifty-third session, 19 June–14 July 2023, A/HRC/53/34, 18 April 2023.

United Nations Population Fund, *Programme of Action*: Adopted at the International Conference on Population and Development, Cairo, 5-13 September 1994 (New York: UNFPA, 1994).

United Nations Security Council, *Resolution 2349 (2017)*, Adopted by the Security Council at its 7900th meeting, on 31 March 2017. S/RES/2349, available at: <https://www.refworld.org/legal/resolution/unsc/2017/en/116859>

United Nations Security Council, “*Open Debate on Energy, Security, and Climate*,” held on 17 April 2007

United Nations Security Council, “*Open debate on the impact of climate change on peace and security*”, held on 20 July 2011

United Nations Security Council “*Draft Resolution on Climate and Security*”, 2021

Van Duren C., *The Legal Obligations for the European Union to Protect Climate-Induced Migrants Crossing European Borders*, Master’s Thesis, Tilburg University, June 2018

Wardhani B., “*The Legacy of Colonialism and Ecological Genocide on Indigenous People of Nauru*”, *Andalas Journal of International Studies*, Vol 12, No 1, 2023

Woodworth F., “*Exclusion of Climate Migrants from the Global Compact on Refugees*”, *GEOPOLITICS* 2024, VOL. 29, NO. 1, 118–147, doi: <https://doi.org/10.1080/14650045.2023.2225242> © 2023 Taylor & Francis Group, LLC

SITOGRAPHY

Council of the European Union, “*A Strategic Compass for Security and Defence*”, 21 March 2022, available at: https://www.eeas.europa.eu/eeas/strategic-compass-security-and-defence-0_en

EEAS, “*Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union’s Foreign and Security Policy*”, June 2016, available at: https://www.eeas.europa.eu/eeas/global-strategy-european-unions-foreign-and-security-policy_en

H.Dempster and K. Ober, *New Zealand's "Climate Refugee" Visas: Lessons for the Rest of the World*, Centre for Global Development, 2020, available at: <https://www.cgdev.org/blog/new-zealands-climate-refugee-visas-lessons-rest-world>

IPCC, <https://www.ipcc.ch/>

New Zealand Immigration, *Pacific Access Category Resident Visa*, available at: [link](#)

UNHCR, <https://www.unhcr.org/about-unhcr/overview/global-compact-refugees>

United Nations, <https://news.un.org/en/story/2023/06/1137382>

United Nations, Pacific Regional Consultation on Internal Displacement, February 11, 2021 at 7h Geneva / 13h Bangkok / 18h Suva, available at: [link](#)

United Nations, *Secretary-General's remarks to the Security Council - on addressing climate-related security risks to international peace and security through mitigation and resilience building*, 23 February 2021, available at: [link](#)

UN News, <https://news.un.org/en/story/2019/07/1042161>

Binding international legal instruments and soft law

Colloquium on International Protection for Refugees and Displaced Persons in Central America, Mexico and Panama, *Cartagena Declaration on Refugees*, 1984

European Parliament and the Council, *Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals*, 16 December 2008

European Parliament and the Council, *Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (Recast Qualification Directive)*, 13 December 2011

European Parliament and the Council, *Directive 2013/33/EU of laying down standards for the reception of applicants for international protection (recast)*, 26 June 2013

European Union, *Charter of Fundamental Rights of the European Union*, 2000/C 364/01, 2000

European Union, *Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving Such Persons and Bearing the Consequences Thereof*, OJ L 212, 7.8.2001

European Union, *Treaty on the Functioning of the European Union (TFEU)*, OJ C326/47, 2012.

New Zealand, *Immigration Act*, 2009

Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 1969

UN Committee on the Elimination of Racial Discrimination (CERD), *General Recommendation No. 30 on Discrimination Against Non-Citizens*, 2004

UN General Assembly, *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, sixty-third session of the General Assembly by resolution A/RES/63/117*, adopted on the 10/12/2008

UN Human Rights Committee, *General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 2004

UN Human Rights Committee, *General Comment No. 36: Article 6: Right to Life*, CCPR/C/GC/36 (30 October 2018)

UN Human Rights Council, *Resolution 48/13, "The human right to a clean, healthy and sustainable environment," A/HRC/RES/48/13*, 8 October 2021.

United Nations, *Convention relating to the Status of Refugees* (189 U.N.T.S. 150, entered into force April 22, 1954), 1951.

United Nations, *Protocol Relating to the Status of Refugees*, 1967

United Nations, *United Nations Charter*, 1945

United Nations General Assembly, *Global Compact on Refugees*, A/RES/73/151, 17 December 2018

United Nations General Assembly, *Universal Declaration of Human Rights*, 10 December 1948

Case-law

Communication No. 3624/2019 submitted by Daniel Billy et al., under the Optional Protocol to the International Covenant on Civil and Political Rights, 13 May 2019

Corte di Cassazione, *Ordinanza n. 5022*, 24 February 2021

European Court of Human Rights, *Budayeva and others v. Russia*, judgment of 20 March 2008

European Court of Human Rights, *M. Özel and others v. Turkey*, judgment of 17 November 2015

European Court of Human Rights, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, Judgment of 21 January 2011

European Court of Human Rights, *Öneryıldız v. Turkey*, judgment of 30 November 2004

European Court of Human Rights, *Sufi and Elmi v. the United Kingdom*, Applications Nos. 8319/07 and 11449/07

International Court of Justice, *Request for Advisory Opinion Transmitted to the Court Pursuant to General Assembly Resolution 77/276 of 29 March 2023: Obligations of States in Respect of Climate Change*, UN General Assembly, A/RES/77/276 (2023)

New Zealand Immigration and Protection Tribunal, *AD (Tuvalu)* [2014] NZIPT 501370-371.

New Zealand Immigration and Protection Tribunal, *AF (Kiribati)* [2013] NZIPT 800413

Supreme Court of New Zealand, *Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment* [2015] NZSC 107 at (11)

UN Human Rights Committee, *Billy Daniels et al v. Australia*, Communication No 2996/2017, UN Doc CCPR/C/130/D/2996/2017 (2021).

UN Human Rights Committee, *Ioane Teitiota v. New Zealand*, Communication No. 2489/2014, U.N. Doc. CCPR/C/116/D/2489/2014 (2016)

UN Human Rights Committee, *Views adopted on Teitiota Communication*, Communication No. 2728/2016, CCPR/C/127/D/2728/2016, 2015