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FORCED CLIMATE MIGRANTS: THE (LACK OF) LEGAL PROTECTION

AN INTERNATIONAL AND EUROPEAN PERSPECTIVE

Relatrice:

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"All men have this right by virtue of their common possession of the surface of the earth, where (because it is a finite sphere) they can't spread out for ever, and so must eventually tolerate each other's presence."
(Immanuel Kant, Perpetual Peace)

ABSTRACT

This thesis investigates the urgent and complex issue of Forced Climate Migrants (FCMs), focusing on significant legal gaps at international and European levels. The study begins by establishing the clear link between climate change and human mobility, detailing how environmental changes such as rising sea levels, frequent extreme weather events, and gradual ecosystem degradation compel individuals and communities to migrate. A critical analysis of current international legal frameworks, including the 1951 Refugee Convention and the landmark Ioane Teitiota case, reveals their limitations in addressing the unique challenges faced by FCMs. The research then shifts to the European context, highlighting the fragmented and inadequate protection mechanisms within the EU, despite some national-level advancements, such as Italy's legislative efforts. The thesis underscores the need for robust legal interpretations and legislative measures that incorporate human rights and environmental justice principles to provide comprehensive protection for FCMs. It calls for a paradigm shift in understanding and responding to climate-induced displacement, emphasizing collective action and the development of a universally applicable legal framework to safeguard the rights and dignity of all individuals affected by climate change.

SOMMARIO

Questa tesi affronta l'urgente e complessa questione dei Migranti Climatici Forzati (MCF), mettendo in luce le significative lacune legali a livello internazionale ed europeo. Lo studio inizia stabilendo il chiaro legame tra cambiamento climatico e mobilità umana, illustrando come fenomeni ambientali, quali l'innalzamento del livello del mare, eventi meteorologici estremi sempre più frequenti e il degrado graduale degli ecosistemi, costringano individui e comunità a migrare. Un'analisi critica dei quadri giuridici internazionali esistenti, tra cui la Convenzione sui Rifugiati del 1951 e il caso emblematico di Ioane Teitiota, rivela le loro limitazioni nell'affrontare le sfide uniche che i MCF devono affrontare.

La ricerca si concentra poi sul contesto europeo, mettendo in evidenza i meccanismi di protezione frammentati e insufficienti all'interno dell'UE, nonostante alcuni progressi a livello nazionale, come gli sforzi legislativi dell'Italia. La tesi sottolinea la necessità di interpretazioni legali più solide e di misure legislative che integrino i principi dei diritti umani e della giustizia ambientale, al fine di fornire una protezione completa per i MCF. Si invoca un cambiamento di paradigma nella comprensione e nella risposta agli spostamenti indotti dal clima, sottolineando l'importanza dell'azione collettiva e lo sviluppo di un quadro giuridico universalmente applicabile per tutelare i diritti e la dignità di tutte le persone colpite dal cambiamento climatico.

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List of abbreviations

CBDR – Common But Differentiated Responsibility

CJEU – Court of justice of the European Union

ECHR – European Convention of Human Rights

ECtHR – European Court of Human Rights

EU – European Union

FCMs / FCM – Forced Climate Migrants / Forced Climate Migration

GCM – Global Compact for Safely and Orderly Migration

GHGs – Greenhouse Gases

ICCPR – International Covenant for Civil and Political Rights

ICESR – International Covenant for Economic and Social Rights

ICJ – International Court of Justice

IDMC – Internal Displacement Monitoring Centre

IOM – International Organization for Migration

IPCC – Intergovernmental Panel on Climate Change

QD – Qualification Directive

RD – Return Directive

SIDS – Small Island Developing States

TFD – Task Force on Displacement

TFEU – Treaty on the Functioning of the European Union

TPD – Temporary Protection Directive

UNEP – United Nation Environmental Program

UNFCCC – United Nations Framework Convention on Climate Change

UNHRC – United Nation Human Rights Committee

INTRODUCTION

Climate change and its connection to human mobility

The Industrial Revolution marked a turning point in human production activity, mainly due to the employing of fossil fuels (Steffen et al., 2007). The new way of production started to have a huge impact on the earth and the atmosphere due the emission of greenhouse gasses (GHGs) and humans began to be the main reason for environmental changes. The impact has intensified so much that the scientific community started to talk about a new geological era; the Anthropocene[1] (Crutzen & Stoermer, 2000). In this era, by exploiting natural resources for its production, humankind is putting in danger Earth's ability to "provide the services required to maintain viable human civilizations" (Steffen et al., 2011), posing a threat to both current and future generations. Indeed, one of the most crucial and alarming phenomena of our time is human-induced climate change.

The Intergovernmental Panel on Climate Change (IPCC) explains that human activities, mainly through the emission of GHGs, are causing various and significant disruption to the environment due to their "unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production" (IPCC, 2023). The most observable and discussed consequence of climate change is global warming: controlling for global surface temperature. We observe that in the period 2011-2020, it had reached 1.1°C above the period 1850-1990

[1] The Anthropocene is a term coined by Crutzen and Stoermer in 2000, and it's defined by the Working Group on the Anthropocene as a "geological time interval, in which many conditions and processes on Earth are profoundly altered by human impact. This impact has intensified significantly since the onset of industrialization, taking us out of the Earth System state typical of the Holocene Epoch that post-dates the last glaciation." (Working Group on the 'Anthropocene' | Subcommission on Quaternary Stratigraphy, n.d.). Steffen and other authors explain that entering in the Anthropocene era has as two main implication: "(i) that the Earth is now moving out of its current geological epoch, called the Holocene and (ii) that human activity is largely responsible for this exit from the Holocene, that is, that humankind has become a global geological force in its own right" (Steffen et al., 2011)

(IPCC, 2023). This is one of the main causes of the rapid and dramatic changes that the Earth's systems are suffering.

Nowadays, we can attribute both sudden-onset climate events and natural disasters, such as droughts, heatwaves, and tropical cyclones (IPCC, 2012), as well as slow-onset processes, such as "ocean acidification, sea-level rise, regional decreases in precipitation," or "desertification and exacerbated land degradation" (IPCC, 2023), to climate change.

The impact of these phenomena on human societies, while being still negative at the end, depends on their adaptation capacity, which is not equally distributed between countries. Indeed, for developed countries coming up with effective adaptation strategies is much easier than for developing ones, as the former have a greater availability of "expertise, technology, institutional capacity and wealth" (Van Aalst, 2006). At the same time, developing countries contribute much less to GHG emissions, a recognized problem highlighted by the IPCC. The IPCC explains how the most vulnerable communities are those who have contributed the least to climate change but are also those who are more exposed to its consequences and are already suffering from "adverse impacts on food and water security, human health and on economies and society and related losses and damages to nature and peoples" (IPCC, 2023). For example, Small Island Developing States are the most threatened by sea level rise which can cause the total submersion of the island, which is a reality for Kiribati and Tuvalu that are predicted to be uninhabitable by 2050 (Berchin et al., 2017).

The disruption caused by climate change could result in migratory phenomena, which is something that the IPCC has warned about since the 1990, explaining that also in this case developing countries are the most vulnerable to being displaced for a lack of adaptation strategy and for them environmental changes may result in "loss of housing", "loss of living

resources", "loss of social and cultural resources" (Working Group Intergovernmental Panel on Climate Change, 1990), leaving no other choice than migrate. IPCC has since then repeatedly commented about the real possibility of migration as a response to human-induced climate change, both for disasters (Working Group Intergovernmental Panel on Climate Change, 1990; IPCC, 2012) and slow onset, longer term, processes (IPCC, 2023; IPCC, 2012).

IPCC has also highlighted that the choice of migration may become an "effective adaptation strategy" (IPCC, 2014) for developing countries, which lack other adaptation and mitigation strategies, and that, if led in a voluntary, safe, and orderly way, it can "allows reduction of risks to climatic and non-climatic stressors" (IPCC, 2023). This is especially true for small island states and coastal lowlands, where a sea-level rise may make them uninhabitable, and the movement of people may be the only possible response (Working Group Intergovernmental Panel on Climate Change, 1990).

The direct link between human-induced environmental changes and migration may be difficult to understand, but the literature has identified four main mechanisms of transmission, which are "tropical cyclones, floods, droughts and sea level rise." (L. Perch-Nielsen et al., 2008). The reason why this phenomena may cause human mobility may be understood using simple "common sense" (L. Perch-Nielsen et al., 2008), such as floods may displace people "by destroying their land, houses and other tangible goods and assets" (Haque 1997, cited in L. Perch-Nielsen et al., 2008) or sea level rise may increase out-migration because the lands are completely submerged and lost (Leatherman 2001, cited in L. Perch-Nielsen et al., 2008). Yet, the connections may be more complex than they seem, as L. Perch-Nielsen et al. (2008) explain by extending and making explicit the linkage model that connects climate change with extreme

phenomena, such as floods and sea level rise, and those with out-migration.

Specifically, climate change increases the risk of excessive rainfalls which consequently increase the possibility of floods. Floods may lead to a series of direct and indirect effects, such as the damage or loss of housing, infrastructure, crops and livestock, or the increase in disease due to contaminated drinking water. To all of these problems society can respond with a variety of adaptation options, including migration, which can be chosen for a series of reasons, mainly connected to “structural damages” and “loss of utilities”, but “labour market factors” may exacerbate this choice. (L. Perch-Nielsen et al., 2008)

For sea level rise the model is similar: climate change influences ice sheet masses which in turn increase the level of sea, the ablation of glaciers and ice caps and the thermal expansion of ocean. These phenomena lead people to embark in a series of adaptation strategy, one of which can be migration, which may be a direct consequence of “land and property” loss but can be also an exacerbated choice because of the “damage to and loss of infrastructure and building” and because of the “reduced income” caused by the environmental disruption. (L. Perch-Nielsen et al., 2008)

Migrations are always multifactorial phenomena, and as we observed, the direct connection between them and climate change is not always so immediate and clear, as environmental issues could interact with other factors of vulnerability and push factor. But as also quantitative analyses have contributed to the affirmation of a causal connection between human-induced climate change and migratory phenomena (Hoffmann et al., 2021), we can conclude that, between all the threat that climate change poses to the environment, migration is a result that we need to take into consideration.

Forced climate migration: a definitory problem

As climate-induced migration is recognized to be an important phenomenon of our time, it has started to be on the policy agenda of different agencies and institutions[2] and has begun to gain political interest around the world. Indeed, it's universally recognized that climate change has caused environmental events that impact on human mobility, with it ranging "from internal to cross-border, from temporary to permanent and from planned to unplanned" (Yildiz Noorda, 2022).

The main problem of discussing climate change-induced migration is the absence of a "universally agreed-upon definition" (Chazalnoël & Randall, 2022). This is the result of what we already explained as one of the main difficulties of recognizing the connection between human-induced climate change and migration: migrations have a multicausal nature and climate change ends up intersecting with many different "political, economic and social factors of instability" acting "as a threat multiplier in fragile contexts." (Chazalnoël & Randall, 2022).

The fact that there is no universally recognized definition of climate migrants poses a series of legal consequences, creating a gap in their international and regional legal protection (Manou et al., 2017) that we will dissect during this thesis.

Even if the definitional problem may seem like a less urgent issue compared to the concrete protection of the people who migrate and are displaced due to environmental reasons, it's the first step to understand their situation in the legal context. Indeed, the absence of a unique definition ends up being one of the main reasons for the uncertainty that

[2] Other than the already cited IPCC, many more international institutions are dealing with the impact of climate change on migration, like the IOM, the UNFCC, the UNEP, the Global Compact for Safe, Orderly and Regular Migration, the UNCHR etc.

surrounds the phenomenon and strongly impacts the ability to efficiently address these movements (Berchin et al., 2017).

The International Organization for Migration (IOM) defines climate migration as:

> "The movement of a person or groups of persons who, predominantly for reasons of sudden or progressive change in the environment due to climate change, are obliged to leave their habitual place of residence, or choose to do so, either temporarily or permanently, within a State or across an international border." (IOM, n.d.)

But this term it's purely an operative term used for "analytic and advocacy purpose" (IOM, n.d.) and has no international recognized legal value, even if it's the one used in the Cancun agreement and for the World Bank statistics.

Referring to people who moved because of climate change with the term "migrant" may lead to an imprecise definition, as it implies a sort of willing in the decision to move (European Parliament, 2023), while climate change can cause environmental events and natural disasters that may cause migration to be the only choice for some people whose homeland has been severely disrupted and rendered (Berchin et al., 2017). Following this thought, in public discourse, people who were forced to move due climate change are often referred to as "climate refugees", which is a term that has first come in the public discourse with Essam El-Hinnawi that, in its 1985 booklet for the UN Environmental Program (UNEP) defined "environmental refugees" as

> "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." (Hinnawi, 1985).

Still, even though it gained popularity in the media discourse, it's important to underline that the term "refugee" has a specific legal meaning connected to the 1951 Refugee Convention that doesn't fit the situation of climate-induced migration. The United Nation High Commissioner for Refugees (UNHCR) argues that in this situation the origin countries don't persecute the individuals, which is the main characteristic to be considered a refugee, and those migrants can still rely on the protection of the home state (European Parliament, 2023). Even in the counterargument that Meyers (2005) proposes, explaining that those people have little to no hope in returning to their homelands, it's acknowledged that climate changes intersect with other 'push factors,' making it difficult to identify refugees solely driven by environmental factors.

Other terms have tried to describe this situation avoiding using the ultra-specific term of refugee. For example, UNHCR refers to people who have moved due to climatic reasons as "environmentally displaced persons (EDPs)" defining them as those

> "who are displaced from or who feel obliged to leave their usual place of residence, because their lives, livelihoods and welfare have been placed at serious risk as a result of adverse environmental, ecological or climatic processes and events" (Gorlick 2007 cited in Boano et al. 2012).

Another definition comes from Hodgkinson et al. (2009) which refers to "climate change displaced persons", explaining that

> "CCDPs are groups of people whose habitual homes have become – or will, on the balance of probabilities, become – temporarily or

> permanently uninhabitable as a consequence of a climate change event." (Hodgkinson et al., 2009)

and they remarked the involuntary basis of movement, as it is forced "in response to climate change impacts that immediately render a particular area uninhabitable" (Hodgkinson et al., 2009).

Some authors have tried to unify different terms under an umbrella one, like Yildiz Noorda (2022) that uses "human mobility", and consequently "human mobility in the context of disasters and climate change" and "Person mobile in the context of disasters and climate change" to refer to voluntary movement (defined as "migration"), forced movement (or "displacement") and the settlement of people in new locations organized by states (i.e. "planned relocation").

Another interesting definition is that given by Jeff Crisp, which refers to "forced climate migrants", explaining that they are

> "People who are displaced from or who feel obliged to leave their usual place of residence, because their lives, livelihoods and welfare have been placed at serious risk as a result of adverse environmental, ecological or climatic processes and events" (Crisp 2006 cited in Brown 2007)

This expression describes well the non-voluntary basis of movement caused by climate change, including all the types of processes and events that can cause it, without making a specific distinction between natural disasters or slow-onset processes.

Up to this point, I have been using the term "climate-induced migration" as it's widely employed by international institutions and it's useful to make the readers understand at first glance what we're talking about. However, given the overview of the different definition, from now on I will adopt the term "forced climate migrants" (FCM), as introduced by Crisp. Indeed,

this term seems to be the most appropriate in a context where there is still great uncertainty about human mobility caused by climate change. It captures not only the involuntary aspect, which is a key determinant factor of the phenomenon, but it also widely includes all the effects caused by human-induced climate change that influence the decision to move. Additionally, the term is easily applicable to international migration, which is the focus of this thesis, unlike other terms that use the word "displacement", which is often used to refer more to internal displacement. In this way we can have a term that respects all the characteristics of the phenomenon without invoking the term "refugee", which has, as already said, a specific legal meaning connected to the Geneva convention of 1951, that, for at least nowadays, does not include forced climate migrants in the definition of refugee.

The confusion surrounding the definition of FCM triggers not only the absence of a precise legal framework but also the lack of a single fully applicable dataset and an uncertainty about the real magnitude of the phenomenon. Still, the dimensions of the movements can be derived from several types of data, like "existing data on people moving in the context of adverse climate and environmental impacts; projections related to the number of people potentially migrating in the future; and data on populations at risk" (Chazalnoël & Randall, 2022).

For example, the Internal Displacement Monitoring Centre (IDMC) drafts an annual report about disaster displacement, and registered 32.6 million Internal Displacement[3] in 2022 related to disaster, which is the highest number in a decade, and 98% "were triggered by weather-related hazards such as floods, storms and droughts" (IDMC, 2023), which we already established having a direct connection with climate change.

[3] Internal Displacement "refers to the number of forced movements of people within the borders of their country recorded during the year" (IDMC, 2023)

Other data may come from the IOM operational data about some specific countries and events, for example, it found that in Madagascar

> "the prolonged drought experienced in the south of the country since 2013 resulted in increasing migration movements from the south to other regions of the country, with some villages experiencing a 30 per cent decrease in their populations" (Chazalnoël & Randall, 2022)

Or that in Mongolia

> "Dzuds (a cyclical, slow-onset phenomenon specific to Mongolia characterized by a summer drought followed by harsh winter weather and deterioration of pasture and shortages of water in spring) were linked to the migration of hundreds of thousands of people from rural areas within the same provinces, towards the cities, including the capital Ulaanbaata" (Chazalnoël & Randall, 2022)

Or that "In Somalia in 2019, data collected on displacement sites revealed that 67 per cent of the almost 700,000 internally displaced persons had moved because of drought." (Chazalnoël & Randall, 2022).

Talking about global projections the World Bank in its Groundswell report estimates that, if we don't take any concrete action about climate, 216 million people may migrate in 6 regions (in order of estimated number of migrants: Sub Saharan Africa, East Asia and the Pacific, South Asia, North Africa, Latin America and Eastern Europe and Central Asia) within their own countries, and this will be caused mainly due slow-onset climate change events, as "water scarcity", "lower crop productivity" and "sea level rise and storm surge" (Clement et al., 2021).

Indeed, regardless of the fact that natural disasters increase yearly the number of displaced people (IDMC, 2023), different studies show that

"slow-onset climatic changes, in particular extremely high temperatures and drying conditions (i.e. extreme precipitation decrease or droughts), are more likely to increase migration than sudden-onset events" (Šedová et al., 2021), and this is because migration helps to serve as an adaptation strategy mainly for this kind of events, as these give the possibility and the time to gather the resources to migrate, as, even when it's the only choice,

Thesis overview and Methodology

Even if internal displacement is more common for human mobility caused by climate change (European Parliament, 2023) in this dissertation I will focus on international migration, as the related legal framework is the most problematic and unclear. In fact, internal displaced people benefit from a more straightforward protection, especially in the case of people displaced due climate reasons and not for humanitarian ones, as remaining in the same state of their own citizenship makes the displaced person entitled to all the same human rights he had in his homeland. Conversely, for forced international climate migrants the situation is much more complicated and there is a more serious legal protection gap (Manou et al., 2017).

In this thesis, I will try to answer two main questions:

1. What is the current legal protection available to forced climate migrants under international and European law?
2. What are the potential future developments in the legal framework for these migrants?

The thesis is divided into two main parts. The first part analyses the international legal framework, while the second part delves into the European Union situation. In the second part, I also analyse the specific case of Italy as an example of good practices.

As sources, I employ various legal fonts, including international conventions, human rights charters, jurisprudence, and statutes of

international organizations, to analyse the legal protections that forced climate migrants (FCMs) do or do not have in the international and European contexts.

In the international legal framework analysis, I examine various instruments that could potentially cover the protection of FCMs, such as the 1951 Refugee Convention and its 1967 Protocol, human rights and environmental justice principle, the framework within the UNFCCC and the soft law of the Nansen Initiative.

I explore how these instruments address—or fail to address—the issue of forced climate migration. I also review relevant case law (for example the Teitiota case) to illustrate the legal precedents and judicial interpretations that impact the protection of forced climate migrants. Finally, I discuss the potential future evolution of the international legal framework to better address this issue and the challenges associated with each potential solution.

The second part of the thesis focuses on the European Union's legal framework. Here, I analyse relevant instruments for the protection of FCMs, including three Directives and the human rights framework. This section also includes an examination of jurisprudence, providing insights into how European legal bodies handle cases of forced climate migration.

Within this part I also consider the European Convention of Human Rights (ECHR). Indeed, its inclusion is necessary due the interplay between the Convention and the EU's legal framework.

The ECHR was established by the Council of Europe in 1950 with the main aim of protecting human rights and fundamental freedoms in Europe. Although the EU and the Council of Europe are separate entities, the ECHR has a considerable influence on EU law. All EU Member States are also signatories to the ECHR, which means they are bound by its

provisions. The European Court of Human Rights (ECtHR), which enforces the ECHR, often deals with cases that have implications for EU law, creating a complex legal landscape where EU law and ECHR obligations intersect. Further, the EU Charter of Fundamental Rights, which became legally binding with the Treaty of Lisbon in 2009, draws heavily from the ECHR. Indeed, in its preamble, the Charter explicitly acknowledges the rights and freedoms enshrined in the ECHR as an inspiration for those consolidated in the Charter and, most importantly, in Article 52(3) it states that the Charter contains rights that correspond to those guaranteed by the ECHR, and that their meaning and scope should be the same.

Within the context of the European Union, I draw on Italy as a case study, analysing it is legislative and jurisprudential framework to highlight best practices and identify areas for improvement.

To explore all these questions comprehensively, I utilize doctrinal legal research as the primary methodology.

This approach involves a thorough examination and interpretation of existing legal documents, statutes, case law, and other relevant texts. By interpreting these documents, I aim to uncover the existing legal protections for FCMs and identify the gaps and inconsistencies in the current legal framework.

Doctrinal legal research is particularly suited for this study as it helps to understand "what the law is" regarding a specific issue. As explained by the Australian Pearce Committee, it “provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and, perhaps, predicts future developments” (Hutchinson, Duncan, 2012). Additionally, Pradeep (2019) notes that "Doctrinal studies deal with searching unknown facts with the

help of review of legal materials to conclude on matters connected to the legal system, policies, laws, and judgments of the judiciary without depending on primary study from the field".

Indeed, this is precisely what I will do. Through doctrinal legal research, this thesis seeks to uncover the extent to which current legal frameworks address the rights and needs of FCMs. It aims to provide a thorough explanation of the current legal situation, review all relevant instruments and their application challenges, and propose potential future developments to enhance the protection of forced climate migrants. By systematically examining the legal texts and judicial interpretations, this research not only elucidates the existing legal landscape but also paves the way for informed legal reforms that can better protect vulnerable populations affected by climate change.

1. CHAPTER 1: THE INTERNATIONAL LEGAL FRAMEWORK

As anticipated in the introduction, forced climate migrants (FCMs) lack from a specific legal framework in the international environment. However, the international community face a moral imperative in recognizing that resettlement may emerge as the only viable solution in some instance and so that those countries that end up being the destination of FCMs should protect their fundamental human rights. This is true both for FCMs that come from those countries where international resettlement becomes the only possible solution due the fact that they have become, or are becoming, totally uninhabitable, such as Small Island Developing States (SIDS), but also for those from larger countries who are unable to cope with climate changes effects due the intersection with other vulnerabilities (Mayer, 2011).

The absence of international law on this topic causes general confusion regarding the treatment that FCMs should receive. Indeed, international law is the only tool that can offer a viable path to establish minimum protection standards that States must respect regardless of domestic law. As the phenomenon is of global interest and a complex, multifaceted, and intergenerational issue, international cooperation, international support, and the promotion of a global minimum standard to address it are essential, even if driven solely by a sense of solidarity towards humanity in general (Yildiz Noorda, 2022; Manout et al., 2017).

However, as Mayer (2011) explains, the rationale behind international community involvement in addressing forced climate migration (FCM) should not be based solely on moral obligation, but it stems from several principles that invoke the responsibility of more developed and less environmentally threatened states. These principles include:

- *Legal Obligation*: Article 4(4) of the United Nations Framework Convention on Climate Change (UNFCCC) obliges developed countries to "assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects" (UNFCCC, 1992). When the UNFCCC was drafted in 1992, awareness of FCMs was extremely limited, and this article "led only to very limited financial aid for in situ adaptation" (Mayer, 2011). But nowadays the situation is different, and the international actors are aware that migration may be a valid adaptation strategy, sometimes the only one, and so it should fall within the notion of "adaptation" in the article. This means that developed countries should assist those who have to migrate due to the adverse effects of climate change.
- *Humanitarian Principles*: international solidarity should be invoked to protect the human rights of all people, including those facing climate-induced displacement. This may involve advocating for political decisions that support populations facing disasters. In a way, international community should be involved in the protection of FCMs even only for the fact that they are human, and, as every human, they are entitled with human rights that may be violated and must be protected.
- *Responsibility and Justice*: this include a more specific principle of "*common but differentiated responsibility*" (CBDR)[4], connected with the fact that, as viewed in the introduction, those who suffer the most from the effects of climate change and are more vulnerable to FCM are the countries that have emitted the least GHGs and

[4] This principle has been conceptualized in Principle 17 of the 1992 Rio Conference, where the major contribution that developed countries have on climate change and the consequential lead they should take in the mitigation of the effects is recognized (Harris, 1999).

gained little benefit from general pollution of other more developed and industrialized countries. This is clearly unfair, and developed states should assume their responsibility, even if it means helping the resettlement of those who have suffered due to their negligence, following the principles of "*tort responsibility*" and "*unjust enrichment*". Responsibility is also connected with a more general principle of "*remedial justice*", based on the idea that parties should be treated equally and that if one party inflict damage on another, it has to remedy this by restoring the victim to their previous condition. This can be extended to FCM considering the fact that other countries have exacerbated the causes that force people to leave their countries. Those who have caused more arm to the environment (i.e. more GHGs emission) should help by creating safe conditions for FCMs to return home or, if the damage is irreversible, by creating a safe place where their human rights and dignity are restored in their resettlements (Williams, 2009).

- *Peace and Security*: The geopolitical consequences of forced climate migration cannot be ignored, as they may cause conflicts, violence, and instability, especially if migration is sudden, unplanned, and illegal. "Western governments cannot ignore the conflicts that are going to arise from climate change-induced migration" (Mayer, 2011). Climate-related mobility may shift power balances due to new contacts between distinct groups, increase resource scarcity (already an effect of climate change), or create tensions between groups that were previously separated (White House, 2021). This approach, even if less connected with a general sense of responsibility and morality, may be the only one that may convince developed countries to act for the security of FCMs and their orderly resettlements.

Despite the multiple reasons for the international community to be involved with FCMs and to establish a specific legal framework for their protection, it remains very distant from this phenomenon and reluctant to "acknowledge that resettlement may sometimes be necessary" (Mayer, 2011). Undeniably, States are generally reluctant to help foreigners, especially if they somehow endanger the control of their borders (Manou et al., 2017).

Although there is no specific legal framework, some existing international instruments are related to some extent to the situation of FCMs. In the next section, by analysing these instruments, I will explore their potential applicability in FCMs international protection.

1.1. Current Situation

1.1.1. The Refugees Framework

As briefly mentioned in the introduction, FCMs are often referred to in the public discourse as "climate refugees", which is not a legally recognized definition, but comes from a "perceivable analogy" based on the fact that they are fleeing from a threat to their safety and dignity (Mayer, 2011). Most certainly, unlike economic migrants who seek for a "better standard of life", FCMs are looking for a place where their right to life is safe, like refugees, and so they should be entitled with similar needs and rights, like the non-refoulement principle (Mayer, 2011). Hence, some argue that FCMs should be protected under the same legal framework as refugees, which is based on the 1951 "Convention Relating to the Status of Refugees" (from now on Refugee Convention).

However, this spontaneous analogy is not compatible with the legal reality, where the main requirement to be recognized as a refugee under the Convention and be entitled of international legal protection is that the deprivation of the fundamental rights must be caused by national authorities (Mayer, 2011). Indeed, the Refugee Convention was developed to protect "people who [are] outside their countries of origin and unable to avail themselves of their governments' protection" (Manou et al., 2017) because of persecution based on one or more of the following reasons: race, religion, nationality, membership of a particular social group or political opinion.

The Refugee Convention define refugee in Article 1A(2) as a person who:

> "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 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."[5] (UN General Assembly, 1951).

Even if a FCMs may be unable to return to their home without facing serious threats, they typically do not face persecution for one of these five grounds outlined in the Convention. Therefore, a strict literal interpretation of the Convention cannot be applied to FCMs as none of these reasons "applies directly or could even be stretched to include those who move because of climate change" (Manou et al., 2017).

One solution proposed for the international protection of FCMs, which I will discuss better in the last section of this chapter, involves amending the Convention "to extend the definition of refugee to include climate refugees" (Manou et al., 2017).

1.1.1.1. Non Refoulment Principle

International refugee law offers another important potential path for the protection of FCMs, i.e. the principle of non-refoulement. This fundamental principle of refugee protection stems from Article 33(1) of the Refugee Convention, which prohibits states from returning refugees to places "where [their] life or freedom would be threatened on account of [their] race, religion, nationality, membership of a particular social group or political opinion." (UN General Assembly., 1951).

As for the rest of the convention, a literal interpretation of this Article might suggest that it cannot cover FCMs as it is based on the already cited

[5] The convention was made universal with the amendment of 1967, which extended the definition of refugee by revoking the geographical and temporal limitations (UN General Assembly, 1997)

five grounds of persecution. However, through the evolution of international human rights law, the non-refoulement principle has been expanded to protect not only refugees but also other categories of migrants who may be entitled of international protection (Yildiz & Noorda, 2022).

For example, Article 7 of the International Covenant on Civil and Political Rights (ICCPR) states that "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" (UN General Assembly, 1966). This right was interpreted in light of the non-refoulement principle by the UNHCR in its 1992 General Comment stating that "In the view of the Committee, States parties must not expose individuals to the danger of torture or cruel, inhuman, or degrading treatment or punishment upon return to another country by way of their extradition, expulsion, or refoulement". In this way the prohibition of refoulement has been expanded to all the people who may suffer from such treatment upon returning to their country. This interpretation goes even further than that of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which covers only those subjected to torture (Molnár, 2016).

Following this interpretation, FCMs may be covered by the non-refoulement principle if it can be demonstrated that the threats they face upon returning home meet the threshold of "inhuman or degrading treatment" outlined by the ICCPR (Yildiz & Noorda, 2022).

One approach proposed to extend the non-refoulement protection to FCMs is built on the definition given by Betts (2013) of "survival migrants", namely those individuals that had to flee their countries because of existential threats for which there are no possible domestic solutions. Betts defines "existential threat" as not only those referring to the "literal right to life" but extending to all "the core elements of human dignity" and

"basic rights", which refer to "the basic conditions for anyone to enjoy any other right". In this sense, FCMs can be defined "survival migrants", and entitled of international protection, if we assume that climate change has rendered their country uninhabitable to the point that their basic rights are at a threat of being violated. This is often true as the environmental effects of climate change affects physical household and their means of subsistence, causing life condition that are clearly not compatible with the concept of dignity and undermining the enjoyment of all the other rights.

Through a similar rationale, the UNHRC, in its decision about the case of Ioane Teitiota, has acknowledged that the non-refoulement principle may be applied to those exposed to life-threatening risks in origin countries due to the impact of climate change, declaring that "the effects of climate change […] may expose individuals to a violation of their rights under articles 6 or 7 of the [International Covenant on Civil and Political Rights], thereby triggering the non-refoulement obligations" (Ioane Teitiota v. New Zealand, 2020).

This decision is relevant because it not only crystallizes the connection between human rights and the non-refoulement principle, but it also marks the first time a UN Committee has acknowledged the potential link between climate change and the violation of human rights protected under the ICCPR, specifically the right to life (Article 6) and the right to be free from torture (Article 7). This decision suggests that those violation can trigger the application of the non-refoulement principle also in the context of FCMs. I will review the specifics of this case and this decision later on in this chapter.

The biggest challenge of this approach is that triggering the non-refoulement principle in the international human rights law requires to demonstrate a real risk of irreparable harm which may be challenging when considering climate change as the sole cause. However,

demonstrating this risk becomes easier when we consider the situation holistically. For example, as Keshen and Lazickas (2022) point out, the combined conditions affecting SIDS are so "extreme" and "exceptional" that may be used to demonstrate that FCMs leaving them may face several risk upon returning home, as they do not only face the threat of their home to be soon submerged by the rising sea level, but also lack the capacity to adapt to the environmental changes due to weak institution and a severe poverty.

Another hurdle that the authors note is that of determining the tipping "point at which environmental degradation due to climate change poses a threat to the right to life", which necessitates a thorough investigation into current and planned mitigation efforts, alongside projections of future climate threats.

Finally, as Petri (2020) notes, there is a problem in applying the right to life to entire populations displaced by climate change. Indeed, traditionally, the violations of the right to life are assessed on an individual basis, requiring a specific and personal threat. However, climate change displacement derives, by definition, from a general condition in the state of origin caused by climate change, making it difficult to evaluate a potential threat to the right to life for an entire community.

1.1.2. Migrants And The "Global Compact For Safe, Orderly And Regular Migration"

While FCMs cannot invoke a refugee status as they legally cannot be protected under the Refugee Convention, they also cannot be protected under a general status of migrants as it is not really recognized nor adequately protected by international law. Indeed, all the international conventions and treaties[6] regarding migrants do not provide any "right to

[6] Like the "International Convention on the Protection of the Rights of All Migrant Workers and

cross borders […] to move or to stay" (Mayer, 2011). On the opposite, the international migration system is guided by "national sovereignty" and "the right of national authorities to decide who can enter their territories" (Manou, Mihr, 2017). While there are limitations on how States treat refugees and on the principles they should apply in their protection (as the non-refoulement one), the management of other types of migration "is much less institutionalised and has fewer internationally accepted norms and frameworks" (Manou, Mihr, 2017). In this way, even if the discourse and the reality are much more complex, there is no restriction on national decision about how admitting, and if admitting, any international migrants, comprehending FCMs, which, at the end, lack any legal protection available to refugees and face national decisions about migration control if they are not recognized with any special status.

One of the very few international document offering rights and protections to migrants and touching upon the possibility of migration due climate change reasons is the "Global Compact for Safely and Orderly Migration" (GCM) which is defined by the IOM (n.d.) a "the first inter-governmentally negotiated agreement, prepared under the auspices of the United Nations, covering all dimensions of international migration in a holistic and comprehensive manner".

The GCM recognizes climate change as a push factor for migration and, in Objective 2, it includes the practices that the international community should follow in the context of migration caused by "Natural disasters, the adverse effects of climate change, and environmental degradation" (UN

Members of Their Families" (UN General Assembly, 1990), the "Protocol against the smuggling of migrants by land, sea and air, supplementing the united nations convention against transnational organized crime" (UN General assembly, 2000), the "Declaration on the Human Rights of Individuals Who are not Nationals of the Country in Which They Live" (UN General Assembly 1985) or the "Migration for Employment Convention" (ILO, 1949)

General Assembly, 2018). In the specific the GCM outlines five key areas to address the issue:

1. The cooperation about data analysis and share so that migration flow can be mapped, understood, predicted, and addressed.
2. The development of in-situ adaptation strategies and the strengthening of community resilience
3. The consideration of displacement as a possible adaptation strategy in the disaster management
4. The creation of harmonized mechanism at the regional and subregional levels
5. The development of comprehensive and coherent international approaches to manage migrations flows in the context of both sudden and slow onset natural events

All of these areas should be developed taking care of the human rights of FCMs wherever they are and promoting international, regional, and national cooperation about the development of new strategy to better manage the movements.

The GCM focus on environmental changes as a reason for climate change also in Objective 5, where states are encouraged to "Cooperate to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin owing to slow-onset natural disasters […] including by de vising planned relocation and visa options, in cases where adaptation in or return to their country of origin is not possible" (UN General Assembly, 2018). This is a particularly crucial point, as it suggests that a part of the international community is ready to give legal protection, as proposing visa options and the manage planned relocation, to those who move due climate change.

This text represents a shift in the international acknowledgment of FCMs as a special category of migrants, calling for a "commitment to

strengthening resilience and preventing displacement which will help people stay" but also recognizing the need for "pathways for planned and regular migration […] in order to allow people to move out of harm's way" (Yildiz Noorda, 2020).

The real issue of the GCM is that it is not a binding agreement but only a soft las instrument, indeed, as the IOM (n.d.) notes, it "respects states' sovereign right to determine who enters and stays in their territory".

However, soft law can still be able to influence international legally binding instruments. As Bufalini (2019) explains, it can have an impact mainly in 3 ways:

1. Confirming existing rules, "reaffirming and strengthening [their] normative value"
2. Helping to interpret existing international norms
3. Reducing the certainty of existing rules, "softening [their] legal status"

For instance, the HRC has referred to the GCM in the Ioane Teitiota v. New Zealand case while the Commission was recognizing the possibility that climate change can cause cross-border movements. Indeed, even if the GCM itself may not be legally binding it still demonstrates a significant opening for the international community about the issue of FCMs and it has started to influence all the other international instruments somehow. Still, it is not something that per se can be invoked for the legal protection of FCMs.

1.1.3. Environmental Justice

Environmental justice offers another potential framework for protecting Forced Climate Migrants (FCMs). This approach is defined by Rosignoli (2022b) as being "multi-focus, multi-issue, and multidisciplinary". Indeed, it goes beyond focusing only on environmental protection while it gives more emphasis to the concept of "human justice", as its core principle is to make sure that all people, regardless of their background, are protected from environmental harm and have access to a healthy environment.

FCMs may directly be linked with this approach. Its aim to address all the "environmental changes that undermine the community's well-being (defined in terms of a person's human capabilities" (Rosignoli, 2022b), and FCMs are a notable example of community which capabilities and well-being are being treated by environmental changes, to the point of being forced to flee.

As it is well explained by the United States Environmental Protection Agency (EPA):

> "Environmental justice means the just treatment and meaningful involvement of all people, regardless of income, race, colour, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people:
>
> - are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and

- have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices." (EPA, n.d.)

Rosignoli (2022b), explains that environmental can arise mainly due four types of violation:

1. *to Distribution*, arising whenever "environmental burdens and benefits" are unfairly allocated.
2. *to Recognition*, when certain social groups are excluded "from the decision making process"
3. *to Participation*, when there is a lack of a public involvement over the "environmental policies' implementation"
4. *to Human Capabilities*, referring to the fundamental freedoms and abilities that allow people to live a life with dignity and fulfilment

The author highlights how FCMs suffer from this violation: they suffer from violation to:

1. *Distribution,* because they have "limited access to the natural resources and eco-services that their well-being depends on", and, as already said different times, because there is a huge disparity between the developed countries that enjoy the few benefits of climate change and developing one, where FCMs are from, that are only affected by the negative side without having contributed as much to it
2. *Recognition and Participation,* as they do not have enough resources to impose their view in the international community and cannot really have a voice in the decision making process about environmental decisions nor in the implementation of environmental policies
3. *Human Capabilities,* because they are experiencing a deprivation of "their cultural ecosystem" and "the loss of political and material

> control over their environment", which not only disrupts their traditional way of life but also hinders their ability to live a dignified and fulfilling life as their environment is directly connected with the subsistence of their life

Given the violations FCMs suffer from, it is possible to assess that their situation can be embedded in this framework. In the next sections, I will discuss three key principles of environmental justice that may be significant in the protection of FCMs, namely the "precautionary principle, the "polluter pays principle", and the "common but differentiated responsibility and respective capabilities." (Rosignoli, 2022a)

1.1.3.1. Precautionary Principle

When talking about FCMs we have one important question to address: how can international law protect them despite the scientific uncertainties about the future impacts of climate change? The precautionary principle, founded precisely to impose an international standard in the possibility of irreversible damage even when there is a lack of scientific certainty (Behrman, Kent, 2018), can help us in give a potential answer. This principle is enounced in Principle 15 of the Rio Declaration (1992), stating that:

> "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation".

If we extend the protection of the States not only to the protection of the environment per se but to all the people suffering because environmental reasons, as environmental justice prescribe to do, we can draw a connection with the context of FCMs.

While scientific uncertainty surrounds the extent of the damage some countries may suffer due to climate change, there is a very real possibility that these countries may become uninhabitable in a not-so-far future, causing immense harm to their citizens. The precautionary principle may be applied in this context because it functions like a sort of “insurance policy against potential harm” (McAdam, 2012). If we can demonstrate that polluters have contributed to the climate change effects that are forcing people to move, and that these effects are posing a potential threat to life in the countries they are fleeing from, then the only possibility itself is sufficient to ensure a “warrant protection” and compel states to take action (McAdam, 2012). In this sense, FCMs can be viewed as a form of "serious or irreversible damage" caused by environmental degradation. Therefore, states are obligated to take "cost-effective measures" to manage the situation, which includes protecting FCMs to prevent future harm.

Despite its potential, the precautionary principle faces limitations in its current application to FCMs from an environmental justice perspective. Firstly, there is no existing international legal instrument that force States to respect the principle in a humanitarian context: The Rio Declaration (1992) enshrines the principle, but it does not explicitly mention Forced Climate Migrants or human beings in general. Secondly, interpreting the principle through the lens of environmental justice to achieve “human justice” might be seen by States as an excessive stretch of its original purpose, ending up on being hesitant to follow such a broad interpretation.

1.1.3.2. Polluter Pays Principle

The Polluter Pays Principle (PPP) is recognized in Principle 16 of the Rio Declaration which states that:

> “National authorities should endeavour to promote the internalization of environmental costs and the use of economic

> instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment."

As it was highlighted in the introduction, the IPCC's 2023 report identified communities with the least contribution to climate change as often being the most impacted by its consequences. This finding makes the "polluter pays principle" (PPP) particularly relevant when discussing FCMs. Indeed, taking this fact in consideration, Eckersley (2015), propose applying PPP to States in the context of FCMs "an ex-post obligation […] to compensate climate refugees on the basis of each state's relative causal contribution to the loss and damage suffered". In this way states that have significantly contributed to climate change would be compelled to take responsibility for the harm caused on those who have contributed the least.

To illustrate a practical example of how the PPP could work to compensate FCMs, Ahmed (2017) has conceptualized a "method for taking responsibility of climate refugees". In the specific, he proposes a framework where FCMs are resettled in countries with the highest CO2 emission, under the idea that they should take responsibility for being the biggest polluters and one of the causes for FCMs movements. His method is based on four indexes: "per capita CO2 emissions […], per capita GNI […], human development index (HDI) […] and per capita planet's resource consumption".

Also, Nawrotzki (2014) propose the concept of PPP as a framework under more developed countries should take adaptation actions, as "fixing climate change" entirely might be challenging and prevention is not always possible. He explains two forms that these actions could take:

1. *Wealth Transfers*: developed countries should transfer some of their wealth to less developed ones to help improve the livelihoods of poor rural population vulnerable to climate change, potentially reducing the need for migration
2. *Resettlement*: developed countries should take responsibility for the harm their emission have caused by allowing the entrance of those who have lost their ability to survive in their homes due to climate change impacts

Still, while the PPP offers an ideal application for the accountability of polluter states, its application in the protection of FCMs faces significant legal and political challenges: there is no legally binding agreement that constrict nations to respect the polluter pay principle in the context of international migration, and it's pretty utopistic to think that this would be implemented without any external pressure. Actually, it is a principle that is not really accepted by developed states, as it can be suggested by the negations for the UNFCC, where the only supporter of the principle was the Alliance of Small Island States (Eckersley, 2015)

1.1.3.3. Common But Differentiated Responsibility And Respective Capabilities

In the first part of this chapter, I already briefly mentioned the importance of the Common But Differentiated Responsibility (CBDR) enounced in Principle 17 of the 1992 Rio Declaration, which enounces that:

> "States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies

> place on the global environment and of the technologies and financial resources they command."

The principle was further reaffirmed in Article 3(1) of UNFCCC (1992) which says that:

> "The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof."

The core idea of the principle is that all countries are involved in the same aim to mitigate climate change, but each one has different "levels of responsibility and ability to meet the shared objectives" (Argyle, 2023). As a matter of fact, some countries have contributed more to carbon emission and have more resources and capacity to contrast climate change and the response to climate change should reflect these differences: those who have contributed more and have more capacity should put more effort in the contrast to climate change and its effects.

Argyle (2023) argue that there is a direct link between the CBDR principle and FCMs as those can be viewed, similarly to the issue of climate change in general, as requiring "international collaboration, because no individual state or region can halt climate change or absorb all climate-migrants on its own" and "the high cost of responding to the issue and the reluctance of other states to contribute discourages states from acting". So, in the same way as countries address climate change mitigation, they should also address the problem of FCMs.

A further connection that the author proposes is based on a more direct causal connection. The CBDR principle applies to both climate change

mitigation and adaptation and FCMs can be seen as “the ultimate form of adaptation to devastating climatic impacts”. This interpretation suggests that CBDR should be extended also to FCMs protection and allocation, treating them as one of the multiple effects that climate change can have.

The responsibility for FCMs should be divided between state following the two main concept of the CBDR principle (responsibility and capability): a greater effort should be done by those countries who have contributed the most to climate change and by those who have more capabilities and resources for managing FCM allocation.

However, it seems very unlikely that developed states and those who pollute the most would ever fully accept this principle, even if it is reiterated in multiple environmental conventions. For example, the US has explicitly declared that they would not accept any interpretation of the principle that “would imply a recognition or acceptance by the United States of any international obligations or liabilities, or any diminution in the responsibilities of developing countries” (Mayer, 2011).

And if they are already sceptical about accepting the CBDR principle in answering climate change, an issue they have at least acknowledged in international discussions, it seems even more likely that they would not accept applying this principle in the FCM discourse. After all, even though it is accepted that FCMs are an effect of climate change, the responsibility for their protection is not accepted by most states (Argyle, 2023).

In general, it would be exceedingly difficult to make states accept their responsibility and act for the protection of FCMs only on the basis of humanitarian beliefs (Eckersley, 2015).

1.1.4. Human Rights

The international human rights regime emerged in 1948 with the proclamation of the Universal Declaration of Human Rights. In the preamble of the Declaration, it was established that it would serve

> "as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction." (UN General Assembly, 1948)

This proclamation was a "milestone […] in the history of human rights" as it was the first time that it was recognized their need for a universal protection based on an international common standard (United Nation, n.d.).

Coming from the end of the Second Word War, the primary focus of the new-born human rights regime was to protect citizens from the violation or abuse of their human rights perpetuated by their own states (Manou, 2017). However, the regime has since evolved. Nowadays there are, in addition of the Universal declaration, 9 main international instruments for the acknowledgment and protection of human rights[7].

[7] The International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities. (OHCHR, n.d.-c)

As the protection of human rights was originally established to safeguard individuals' rights from external violation, primarily by States, environmental causes were not initially considered. However, in recent years, the UN Office of the High Commissioner for Human Rights (OHCHR) has underlined the importance of human rights protection in the climate change context, explaining that the resulting environmental effects threaten the enjoyment of various human rights, "including those to life, water and sanitation, food, health, housing, self-determination, culture and development." (OHCHR, n.d. -a). Indeed, climate change effects may cause difficulties in the supply of food, for example through the increasing in frequency and intensity of droughts, and in the availability of safe water with consequent effects on health. When the effect are particularly strong, like in the case of flooding or extreme weather, they can damage housing and threaten the physical life of communities. Further, when those consequences become so unbearable to force people to flee, their own freedom of movement is violated, resulting in threats to liberty and often in the division of families, thus violating the right to privacy and family life (Atapattu, 2020). Specifically, as Behrman et al. (2018) explain, both substantive rights (which are based on the right to life and property, such as the right to health, an adequate standard of living, water, or secure housing) and procedural rights (which "impose duties on states," such as the protection of rights to expression, association, participation, and so on) can be violated due to the effects of climate change.

When the OHCHR (n.d. -b) recognized this link between human rights violation and human mobility, it also acknowledged the obligation of State to consider human rights law when dealing with FCMs, stating that "States must ensure that any measure or legislation that governs or affects migration is consistent with their human rights law obligations and does not adversely affect the full enjoyment of the human rights of migrants."

A significant milestone in the recognition of the effects of climate change on human rights was the "Male' Declaration", which "was the first intergovernmental statement explicitly recognizing" the connection between climate change and the fulfilment of human rights (OHCHR, 2016). The declarations states that

> "climate change has clear and immediate implications for the full enjoyment of human rights including inter alia the right to life, the right to take part in cultural life, the right to use and enjoy property, the right to an adequate standard of living, the right to food, and the right to the highest attainable standard of physical and mental health" (Small Island Conference, 2007).

If the universality of human rights that the UN declares is true and, as article 1 of the Universal Declaration of Human Rights states, "All human beings are born free and equal in dignity and rights" (UN General Assembly, 1948), every person should be entitled to their protection whoever and wherever they are. While certain rights, such as citizenship ones, may be legally applied only by origin states and withheld by foreign states, other rights (such as the rights to life, liberty, and security) are universal and should be applied even to displaced people by whichever states they are in (Atapattu, 2020). Even though the OHCHR (2009) notes in article 58 of the "Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights" that people moving because environmental factors don't have any right to cross the borders and enter another State, it also acknowledge they are still entitled to the protection of their general human rights by the receiving State.

1.1.4.1. Core Principles: Right To Life, Dignity, Humanitarian Principles, Duty To Cooperate

The right to life is not only one of the most important recognized human rights and fundamental to all other rights, but it is also crucial when discussing the protection of FCMs. This right not only triggers the non-refoulement principle, as previously discussed, but it is also directly impacted by extreme conditions caused by climate change. For instance, it is clearly threatened by the realistic possibility of SIDS submersion or by the destruction of housing due to extreme weather events like hurricanes or cyclones (Petri, 2020). In the Sahel, for example,

> "sea level rise in coastal areas is leading to increased risk of mortality, injuries and poor physical and mental health, while flooding and increased rainfall is increasing exposure to water or insect-borne diseases. Dry seasons and drought […] have had an impact on increased consumption of or contact with unsafe water and the likelihood of diarrhea. […] Extreme weather events, such as persistent torrential rainfalls, have caused flooding and infrastructure damage in the Sahel region, with impacts on the right to life and the right to an adequate standard of living, including the rights to water and sanitation, adequate food and adequate housing" (OHCHR,2022).

In the Ioane Teitiota case, as I will analyse more deeply later on, the Human Rights Committee (HRC, 2020) stated that "environmental degradation can compromise the effective enjoyment of the right to life, and that severe environmental degradation can adversely affect an individual's well-being and lead to a violation of the right to life." Still, the triggering of the right to life in the concrete protection of FCMs is strictly connected with the non-refoulement principle and suffers from the limitations already covered.

Other core principles for the protection of FCMs can be derived from the "Draft articles on the protection of persons in the event of disasters"

submitted during the sixty-eighth session of The International Law Commission (ILC, 2016). These principles include "Human dignity" (Article 4), "Humanitarian principles" (Article 6), and the "Duty to cooperate" (Article 7).

Human dignity, as explained by Behrman et al. (2018), is based on three elements: "(1) every human being possesses intrinsic worth; (2) which should be recognized and respected by others; (3) and the intrinsic worth of the individual requires that the state exists for the sake of the individual human being". Recognized by various declarations and international documents (other than being a core principle in the Universal Declaration of Human Rights it's declared, for example, in the UN Guiding Principles on Internal Displacement[8] and in the New York Declaration for Refugees and Migrants[9]), dignity is a core principle in the application of human rights law and it must be applied in all situation and policy regarding climate change whether they refer to in-situ adaptation or to FCMs and their resettlement. (Behrman et al., 2018).

Humanitarian principles, besides being core elements of the international human rights law, are also principles of the law of the sea and are complementary to "all areas of international law" (Behrman et al., 2018). These principles are based on the obligation to assist people in distress, regardless of who they are and where they come from. For example, in the law of the sea, this means providing "at least temporary admission to a state" regardless of "their legal status or the circumstances in which they are found" (McAdam cited in Behrman et al., 2018). This principle could be extended to FCMs who cross borders seeking assistance and protection.

[8] In Principle 11(1) it says that "Every human being has the right to dignity and physical, mental and moral Integrity" (UN Commission on Human Rights, 1998)

[9] The principle shape all the statements of the declaration, one example is article 41, which declares the commitment "to protecting the safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status, at all times." (UN General Assembly, 2016)

When returning home is unsafe, humanitarian principles could trigger the non-refoulement principle, as discussed earlier, by obliging the foreign state to offer temporary refuge.

The *Duty to cooperate* is a fundamental principle of international law, as it is embedded in the UN and its Charter. While there is no "substantive obligation to provide assistance" to FCMs (Behrman et al., 2018), the OHCHR (2009) highlights the role of cooperation in protecting human rights in the context of climate change, stating that "International human rights law complements the United Nations Framework Convention on Climate Change by underlining that international cooperation is not only expedient but also a human rights obligation and that its central objective is the realization of human rights". The New York Declaration for Refugees and Migrants (UN General Assembly, 2016) reinforces this principle, acknowledging the importance of extending it to the management of migration flows and integrating it with the principle of respective capabilities, "recognizing that there are varying capacities and resources to respond to these movements.". By interpreting this duty through these lenses, it could trigger all those environmental justice principles discussed before, requiring states to cooperate under the burden sharing and responsibility principle for the protection of FCMs. Indeed, it is only when environmental justice principles are is interpreted and applied taking in consideration the human rights framework that it is possible to provide a certain grade of protection to FCMs (Behrman et al., 2018). As Manou et al. (2017) note, the only way to deal with those most affected by climate change is to use "climate justice based on human rights".

1.1.4.2. The Problems Of The Human Rights Framework

Concluding the discourse on human rights, even though they are strictly connected with climate change and FCMs, they cannot be used alone to establish protection for the latter and are not helpful in regulating their

admission to foreign countries, as there is no such right to cross the border of another state (Behrman et al., 2018). This means that, especially if they cross borders illegally (as they are expected to do since they have no legal right to do so), "the gaps in the current legal regime amount to a serious (and predictable) failure of justice" (Atapattu, 2020).

Besides the already discussed problem of triggering the protection of the right to life, it is generally difficult for FCMs to make any claim for the protection of their rights against those states that have contributed the most to climate change appealing to their responsibility. For example, in the case of rising sea levels causing floods, it is practically impossible "to demonstrate a direct causal relationship between the carbon emissions of one state and the specific damage threatened to another because of rising sea levels". Moreover, "Carbon-producing states have no legal responsibility to ensure adequate flood protections for them" (Behrman et al., 2018).

Additionally, as in the case of non-refoulement triggered by the right to life, most human rights operate on an individual basis, while climate change effects impact all inhabitants of a certain region without persecution or discrimination, making it nearly impossible to determine "who should be protected and who bears responsibilities" (Behrman et al., 2018). Indeed, "we do not know whom to hold legally – let alone politically – accountable" or "where to file claims against or how to prosecute or indict those who are responsible" (Manou et al., 2017).

1.1.5. UNFCCC

The United Nations Framework Convention On Climate Change (UNFCCC) is a treaty adopted in 1992 and ratified by 198 parties. Its primary goals it to stabilize greenhouse gas concentrations, as stated in Article 2: “The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.” (UNFCCC, 1992). Its adoption marked a shift in the international cooperation on climate change (Yildiz Noorda, 2022), acknowledging for the first time that its effects are “a common concern of humankind” (UNFCCC, 1992). Following this treaty, other significant agreements were established, such as the Kyoto Protocol and the Paris Agreement (United Nations, n.d. -b).

The first time the UNFCCC has recognized the problem of FCMs was in the 2010 during the COP16, which led to the “Cancun Agreements”. Among those agreement the most important for the issue is the “Cancun Adaptation Framework”, where “the international community gradually identified the potential interlinkages between climate change and the movement of people” (Yildiz Noorda, 2022). In the specific, in article 14(f) of the Report of the Conference of the Parties, the conference invites all parties to take “measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels” (UNFCCC, 2011).

This was the first time that human mobility as an adaptation strategy to climate change was recognized at a political level and not only at a scientific one (Warner, 2012). Indeed, this political acknowledgement came a lot later the first recognition in the scientific community made by the IPCC in 1990, but, observing the political importance of international migration and all the scientific uncertainties that surrounded climate change in general and the difficulties to demonstrate a direct link with climate change the long time to include the issue in the UNFCCC seems understandable (Sciaccaluga, 2020).

The Cancun Agreements represent the start of a new era of "policy making on climate change and migration" (Nash, 2018). In fact, it is around this time that the international political community started to acknowledge the "interlinkages between climate change and the movement of people" (Yildiz Noorda, 2022), developing initiatives like the Nansen Initiative and its evolution, the Platform on Disaster Displacement (Sciaccaluga, 2020).

As Yildiz Noorda notes (2022), during this first period the concerns about FCMs were addressed mainly under cooperation reasons, "rather than for liability or compensation", while after the adoption of the Task Force on Displacement the UNFCCC started to observe the issue under the lens of human rights protection.

In 2013, the International Mechanism for Loss and Damage was established, further advancing the issue of displacement due to climate change after the establishment of the Warsaw International Mechanism for Loss and Damage adoption in the 2012 (Yildiz Noorda, 2022). This renewed attention for human displacement led to the establishment in 2015 at COP21, the same year of the Paris Agreement, of the Task Force on Displacement (Yildiz Noorda, 2022), after the request of Parties to "the Executive Committee of the Warsaw International Mechanism to

establish, according to its procedures and mandate, a task force to […] develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change" (UNFCCC, 2016).

However, in the main text of the Paris Agreement there was no reference to displacement, reflecting a resistant reluctance from states, mainly developed ones, to acknowledge and take care of the problem. Indeed, in the discussion that led to the agreement, while developing states asked for the international coordination and cooperation in managing the issue, some developed country, especially Australia and the EU, "insisted on excluding any reference to the issue in the text". The creation of the Task Force was a compromise to deal with the problem without giving it the possibility to enter in any legally binding agreements (Vanhala, Calliari, 2022).

Still, these efforts can be viewed as an emerging and progressive acknowledgement in the international community of the importance to create a framework for the protection of FCMs (Sciaccaluga, 2020).

1.1.5.1. Task Force On Displacement

The task force on displacement (TFD) is composed by "experts on human mobility and representatives of both the Global South and the Global North compose the Task Force, which includes members of the International Labour Organization (ILO), the UNEP, the International Federation of Red Cross and Red Crescent Societies (IFRC), the UNHCR, the IOM, and of the Platform on Disaster Displacement" (Sciaccaluga, 2020). This diverse composition that comprehends many experts on human mobility and human rights and not only on climate change, show a willingness of the Parties to integrate specialized knowledge to complement a mere scientific point of view (Behrman et al., 2018). Indeed,

as mentioned before, it is at this point that the UNFCCC's acknowledgement of climate change effects starts to intersect with human rights law regime (Sciaccaluga, 2020).

As a matter of fact, in its report the TFD (2019) acknowledges not only the work of the UNFCCC, but also all the other international documents related to displacement, migration, refugees and human rights in the context of climate change[10]. This is straightforward evidence of the shift in the thoughts of UNFCCC's parties about the importance of intersecting different principle in the possible creation of a framework for the protection of FCMs.

The final report of the first phase of action of the TFD was released in 2018 before the Katowice COP24[11] recognized the possibility of displacement from both sudden and slow-onset climate events and it identified the gap in the current policies and international law addressing it. Most importantly, it identified the phenomenon as "a development, humanitarian and human rights challenge that requires increased investments in understanding risks and impacts in local contexts and in reducing vulnerability and exposure" (TFD, 2018).

The desired impacts of the TFD were various, and they included:

- enhancing the "policies and institutional framework" and the "capacities of national and local governments",

[10] In the specific, in article 18 it is states that the TFD took in consideration: "the Paris Agreement", "Decisions 1/CP.16,4 3/CP.18,5 2/CP.196 and 1/CP.21", "the 2016 New York Declaration for Refugees and Migrants of the UN
General Assembly", "the Global Compact for Safe, Orderly and Regular Migration", the "Global Compact on Refugees", "the Resolution on Human Rights and Climate Change, of the Human Rights Council", "the IPCC 5th Assessment Report", "the Guiding Principles on Internal Displacement", "the Sendai Framework for Disaster Risk Reduction", "the Sustainable Development Goals", and the "Nansen Initiative Protection Agenda" (TFD, 2018)

[11] In the Report of the Conference the part dedicate to the "Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts" welcomes "The report of the task force on displacement and its comprehensive assessment of broader issues of displacement related to climate change" (UNFCCC, 2019)

- recognizing the “adverse impacts of climate change on displacement” and promoting an “integrated approaches to avert, minimize and address displacement are promoted in relevant policies at all levels, including international, regional, national and sub-national levels”,
- considering the issue of displacement “in the workplans of relevant bodies and processes under the UNFCCC”,
- strengthening “systematic data collection and monitoring of displacement and its impacts”
- stimulating “commitment, cooperation, and action to avert, minimize and address displacement in the context of climate change”

In the report they included a series of recommendation, directed to enhancing the international cooperation, “coordination, coherence and collaboration” of all the bodies under the UNFCCC and the United Nations “to avert, minimize and address displacement related to the adverse impacts of climate change”.

Between the recommendations that the TFD made to the Parties some are a good point for thinking about the future evolution of the protection of FCMs as:

- formulating legislation, policies and strategies at both national and subnational level while taking always in consideration the obligation under the human rights international framework (Article 33a)
- assisting internal FCMs under the recommendation made in the Guiding Principle on Internal Displacement (Article 33e)
- facilitating “orderly, safe, regular and responsible migration” not only in accordance with “national laws and policy” but also

considering the needs of migrants themselves and trying to enhance the possibility of regular mobility (Article 33f)

- providing assistance and protection to “affected individuals and communities”, taking always in consideration “existing national laws and international protocols and conventions” (Article 34c iii)

An essential aspect of the TFD's work is recognizing the importance of a human rights-based approach, integrating it with other normative frameworks such as regular and labour migration frameworks, international environmental law, and internationally agreed principles related to human mobility. This integrative approach is vital to develop a comprehensive legal framework for FCMs protection, as each of these frameworks taken alone have stringent requirements to be applied that FCMs may find difficult to satisfy (Sciaccaluga, 2020).

While the TFD’s work is not revolutionary, as it offers mostly conservative recommendation in the field of the legal protection, and neither the second nor the third phases seem to acknowledge any possibility to implement of a legal framework for the protection of FCMs, it’s still a great starting point for the international discussion around the issue. As Yildiz Noorda (2022) notes it “has been an important forum for conducting advocacy for the preparation and dissemination of reports and policy” and the past, current and future work of the TFD should serve to “advances the engagement of various actors in order to strengthen the global response”.

Still, one critical problem remains: the recommendations are not legally binding because they did not make to the main text of the Paris Agreements. This is mainly due developed states that are worried for any instrument that could affect the control of their national borders (Vanhala, Calliari, 2022). Consequently, “there is no accountability or enforcement mechanism beyond the voluntary implementation process” (Yildiz Noorda, 2022). However, the willing to implement those

recommendations on a voluntary basis, seems to be lacking from those states that should be more involved in the protection of FCMs, because of their responsibility in creating the problem and their capacity to respond to it.

1.1.6. Good Practices: Nansen Initiative, The Protection Agenda And The Platform On Disaster Displacement

The Nansen initiative is the biggest state-led, bottom-up, consultative process focused on cross-border disaster displacement. It was launched by Switzerland and Norway and supported by other states in 2012 and it resulted in the "Agenda For The Protection Of Cross-Border Displaced Persons In The Context Of Disasters And Climate Change", endorsed by 109 States in 2015. The Nansen Initiative evolved into the Platform on Disaster Displacement (PDD) in 2016, aimed at promoting the implementation of the measures advocated by the Nansen Initiative and addressing the protection gap for people displaced by disasters and climate change (Rosignoli, 2022).

The primary aim of the Nansen initiative, and subsequently of the PDD, is to address the existing legal framework's gap in protecting FCMs, particularly those displaced across borders due to disasters. Instead of proposing new framework or guidelines, the Initiative offers "a set of good practices and practical tools that governments may use to respond when people are displaced across borders by disasters" (Manou et al. 2017), with the intention of gaining the attention of government and pressing the international community to put the issue on its political agenda. As McAdam (2016) notes, the Initiative has helped shape and frame the debate by presenting practical solutions grounded in existing state practices, drawing together "effective practices from around the word", proposing recommendation that could help States to improve their capacity to assist displaced peoples.

As a matter of fact, the Protection Agenda underlines the fact that it is not a binding agreement in the definition that it gives about protection:

> "This agenda uses "protection" to refer to any positive action, whether or not based on legal obligations, undertaken by States on behalf of disaster displaced persons or persons at risk of being displaced that aim at obtaining full respect for the rights of the individual in accordance with the letter and spirit of applicable bodies of law, namely human rights law, international humanitarian law and refugee law. While highlighting the humanitarian nature of such protection, *the agenda does not aim to expand States' legal obligations under international refugee and human rights law for cross- border disaster-displaced persons and persons at risk of being displaced* [emphasis added]" (Nansen Initiative, 2015)

The Agenda focuses on conceptualizing a comprehensive approach to disaster displacement, primarily protecting cross-border disaster-displaced persons under human rights and compiling effective practices for more effective future responses. It calls for increased collaboration among various actors and identifies three key areas that must be considered by States to support the implementation of good practices: enhancing data collection, reinforcing humanitarian protection measures, and managing disaster displacement risks in the country of origin, including implementing disaster risk reduction strategies, facilitating migration as an adaptation strategy, improving planned relocation, and ensuring to address the needs of displaced people (Nansen Initiative, 2015).

In Part One, "Protecting Cross-Border Disaster-Displaced Persons", the Agenda suggest two main ways states can offer protection: admitting displaced persons (at least temporary) or, if already present in the territory, not returning them in the country where the disaster occurred. For both cases, the Agenda offer some good practices to follow.

- In the case of admission, the Agenda suggests establishing clear criteria to identify displaced persons in need of protection and

assistance based on the severity of the disaster and its impact on the individual. These criteria should be integrated into domestic laws and policies regarding human rights, refugees, children, and trafficking, always taking in consideration international obligation. Further, the Agenda suggests various practices for admission and stay, including "granting visas" (humanitarian ones included), "temporarily suspending visa requirements", and considering applying "refugee status or similar protections under human rights law"

- For non-return cases, the Agenda recommends providing displaced persons with humanitarian protections, such as suspending deportations or extending/changing their existing immigration status.

Succeeding the Nansen Initiative, the PDD stated its aim in 2016 in its first strategic framework, which is "to strengthen the protection of people displaced across borders in the context of disasters, including those linked to the effects of climate change, and to prevent or reduce disaster displacement risks". The PDD's framework outlines four key strategic priorities:

- *Addressing knowledge gaps*: the PDD states it will collaborate with relevant actors to "map existing information", identifying gaps, and propose solutions
- *Enhancing effective practices*: the PDD aims to "strengthen cooperation among relevant "relevant actors to prevent, when possible, to reduce and to address cross-border disaster-displacement at the national, regional and international levels". This includes promoting existing humanitarian measures adopted by some states and consolidating them.

- *Promoting policy coherence*: the PDD advocated for aligning "human mobility challenges" with other relevant areas, such as the 2030 Agenda for Sustainable Development, the Paris Agreement, the UNFCCC Task Force, and the Global Compact on Migration.
- *Closing gaps*: the PDD wants to "promote policy and normative development" at the national, sub-regional, and international levels. This includes analysing existing policies, understanding mobility patterns, and developing new guidelines to apply existing laws to disaster displacement or supporting the creation of new legal instruments.

In the second strategic framework of the PDD (2019) its aim switched a bit, becoming "to support States and other stakeholders to strengthen the protection of persons displaced across borders in the context of disasters and the adverse effects of climate change, and to prevent or reduce disaster displacement risks in countries of origin", focusing more on the States' and stakeholders' sides rather than on displaced people. The new strategic priorities identified for the period 2019-2023 are:

- *Integrating policy framework*: the PDD aims to implement "global policy frameworks on human mobility, climate change action and disaster risk reduction that are relevant for disaster displaced persons". The PDD aims to become a "recognized voice" about the topic in the international scenario and wants to ensure that the issues remain a hot topic in the global agenda by cooperating with all the relevant stakeholder
- *Address protection gaps*: the PDD wants to promote "policy and normative development" by promoting the implementation of existing legal instruments rather than creating new binding agreements

- *Capacity building*: the PDD wants to facilitate knowledge exchange and strengthens national and regional capacities to "prevent, reduce and address disaster displacement". This includes providing "advice and guidance, technical support, workshops and capacity building […] upon request and in close cooperation with States, partners and existing coordination mechanisms."
- *Strengthening Evidence*: the PDD prioritizes strengthening evidence and data collection on disaster displacement and its impacts.

In its most recent strategy plan, the PDD (2024) maintains the same 2019 aim and propose three new strategic priorities for 2024-2030:

- *Strengthening protection mechanism*: the PDD promotes the use of existing legal frameworks, such a "humanitarian visa and temporary protection schemes", while advocating for their harmonization with human rights law to better address the needs of climate and disaster displaced people.
- *Disaster risk management*: the PDD suggests accepting and integrating human mobility as an adaptation strategy for disaster and climate change effects.
- *Planned relocation and durable solutions*: the PDD promotes using "planned relocation as a preventative or responsive measure to disaster/climate risk and displacement" and implementing existing laws to enhance the protection of disaster displaced people.

In line with the evolution that happened at the global level, the PDD has evolved its language and understanding about the connection between human mobility, disaster, climate change and human rights law. Regarding this last point, it is interesting it is interesting to notice how the principle of humanity, human rights and humanitarian assistance are a common narrative that went from the Nansen Initiative and Protection Agenda to

the PDD, suggesting a possible normative and practical framework based on human dignity and human rights (Okeowo, 2018).

Even if the good practices that the Initiative proposes can be extremely useful in constructing a future legal framework for the protection of disaster-displaced people and have shaped international discourse, they lack any binding legal value.

Further, they focus only on disaster-related displacement, without considering slow-onsetting events or the anthropogenic causes of climate change. This approach does not cover the responsibility of the states and does not take in consideration any of the environmental justice principle, giving states a huge discretion in the case they wanted to follow the proposed good practices (Rosignoli, 2022).

Indeed, it seems that the major impact of the PDD so far has been the production of knowledge (Disaster Displacement, 2024). While this fulfils the strategic priorities related to evidence and data, new policies, and any commitment to develop new strategy to address the issues are struggling to make their appearance.

1.2. Ioane Teitiota v. New Zealand case

The Teitiota case is, for nowadays, the only international case that reached the UN Human Rights Committee (UNHRC) dealing with FCMs[12].

The appellant, Ioane Teitiota, a man from South Tarawa in Kiribati, and his family left their home state due continuous struggling with "poor-quality land, frequently inundated by high tides and flooding" (Behrman, Kent, 2020) to move in New Zealand in 2007. After his permit expired, he applied for refugee status before the New Zealand Immigration and Protection Tribunal in 2013. claiming that the environmental changes in Kiribati caused by sea-level rise associated with climate change made his homeland uninhabitable.

The Tribunal recognized the exacerbation of existing difficulties in South Tarawa due to climate change and acknowledged the possibility of "significant human rights issues" but did not grant him refugee status. The tribunal reasoning explained that Teitiota's situation did not meet the criteria under the Refugee Convention, as there was no evidence of a real chance of being persecuted upon returning in Kiribati. Nor did they found enough evidence to accept his claim under the Convention Against Torture, as there was "no substantial grounds for believing that he would be in danger of being subjected to torture […] if deported from New Zealand", nor under the Covenant on Civil and Political Rights, as he should've shown that "an act or an omission" of the origin State were negatively affecting the enjoyment of the right protected by the Covenant to claim a violation, while there was no evidence that Kiribati Government wasn't taking action about the threats posed by "climate change-related e events and processes". Further, there was no "imminent" threat to his life, or at least the risk of any threat was not sufficient to meet "the threshold

[12] See https://climatecasechart.com/non-us-case-category/climate-migration/

[…] for believing that they would be in danger of arbitrary deprivation of life within the scope of Article 6" (New Zealand: Immigration and Protection Tribunal, 2013).

Mr Teitiota appealed to the Supreme Court of New Zealand, after being rejected by the Court of Appeal, but it agreed with the lower courts, finding no evidence of "serious harm" if he returned to Kiribati and acknowledging that the Kiribati government was taking steps to protect its citizens (Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment, 2015).

1.2.1. UNHRC Ruling

As a last-resort attempt, having exhausted all available domestic remedies, Teitiota complained before the UN Human Rights Committee claiming that, by repatriating him, "New Zealand violated his right to life under the Covenant [of Civil and Political Rights]", violating Article 6 (HRC, 2020).

The UNHRC recalled the non-refoulement principle under the rights of the Covenant, as parties should not remove individuals if "there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant" and that this principle, as we have already noted before in this chapter, goes behind the entitlement of refugee status. However, the Committee notes that to trigger this principle the risk must be personal, and a high threshold is required "to establish that a real risk of irreparable harm exists". (HRC, 2020)

The UNHRC also reiterated that "that the right to life also includes the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death" as already declared in its General Comment No.36. Consequently, the right to life must be interpreted in an extensive manner and that this requires active

actions from the State for the protection of it, which also “extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life”. (HRC, 2020)

Further, the most important aspect of this case is the Committee's emphasis on the connection between environmental degradation, climate change, unsustainable development, and the right to life. The Committee highlighted that “environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life”. It also acknowledged that regional human rights tribunals have already established that these factors can “adversely affect an individual’s well-being and lead to a violation of the right to life”. It also asserted that “without robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the non-refoulement obligations of sending states” and that the risk is much more higher for SIDs as “the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized”. (HRC, 2020)

However, even recognizing all these threats that could arise from climate change, the Committee did not find a violation of article 6(1) of the Covenant in Teitiota’s case. The UNHRC determined that the general situation in Kiribati, while challenging, did not pose an imminent threat to life, as an eventual risk of complete submersion of the island would only happen in 10-15 years. Moreover, the risk of harm faced by Teitiota were not specific to him (which is a condition for triggering any violation of the right to life), but were general to the population of Kiribati, and there was no evidence, as already noted by New Zealand Courts, that the

Government of Kiribati was acting (or not acting) in a wat that could violate the life of the inhabitants. On the contrary Kiribati's Government was found to "taking adaptive measures to reduce existing vulnerabilities and build resilience to climate change-related harms". This means that the New Zealand did not violate Teitiota's rights under article 6(1) of the Covenant by deporting him back to his home state. (HRC, 2020)

One notable dissenting opinion was made by the Committee member Duncan Laki Muhumuza, who argued that the conditions in Kiribati posed a real, personal, and reasonably foreseeable risk to Teitiota's life under Article 6(1). He emphasised the "need to employ a human-sensitive approach to human rights issues" and called out the Committee to handle more critically the "irreversible issues of climate change". He underlined all the difficulties faced by Kiribati due to climate change, such as "scarcity of habitable space", "contamination of water supply", and "destruction of food crops". He also argued that the risk threshold to trigger the non-refoulement principle is "too high and unreasonable," stating that it should not require imminent deaths to be met, as "it would indeed be counterintuitive to the protection of life to wait for deaths to be very frequent and considerable". Muhumuza also noted that the right to life includes the right to dignity, which he believed was lacking in Teitiota's and his family's livelihood in Kiribati, and that "the fact that this is a reality for many others in the country does not make it any more dignified for the persons living in such conditions", arguing against the requirement of personal and individual risk (HRC, 2020).

1.2.2. Comments

The decision of all courts in the Teitiota case are consistent with the current understanding of refugee status application to FCMs: it is not legally possible under the Convention Relating to the Status of Refugees, as the conditions specified for protection under this convention are not met by individuals fleeing environmental issues. Similarly, the decisions align with the already discussed protection of FCMs under the human right framework: a violation of human rights, when detached from other consideration, tis impossible to be claimed by FCMs as it requires a threshold of risk so high that it is impossible for these migrants to demonstrate and claim. Furthermore, the risk they face is not a result of government authorities' (lack of) actions, but rather is a general condition that affect all citizen indiscriminately, violating the requirement of personal and individual risk.

Still, the UNHRC's decision marks a significant turning point in the international consideration of the condition of FCMs and their protection, mainly for two reasons:

- First of all, the Committee has crystalized how the non-refoulement principle does not work only for refugees but can be invoked also in the context of climate change migration, still considering the extremely high-risk threshold of irreparable harm
- Secondly, it "reaffirmed the fundamental link between the right to life, human dignity, and the need for environmental protection" (Galloway, 2022), This opens up the possibility for future interpretations of the protection of the right to life, suggesting that it can be viewed broadly to include violations caused by climate change and environmental degradation

Indeed, the decision has made steps forward in recognizing the intersection between human rights law and the refugee protection regime in light of the

FCMs situation, warning states and future tribunals to take in consideration the possible human rights threat that climate change can cause when “evaluating asylum and refugee claims”. The groundbreaking aspect of the UNHCR’s decision lies “in bringing the intersectional consideration at the normative-theoretical level into a real and individual climate refugee case in practice” and showing how human rights treaty have a “great potential to contribute to global fight against urgent threats to human security in particular in multi-dimensional issues such as climate change and migration” (Hatano, 2021).

All of this aligns with what was observed in the previous parts of this chapter: all international instruments should be considered together when evaluating the international protection of FCMs. As a multidimensional and multicausal phenomenon, any instrument taken alone cannot offer an accurate protection, while considering them together can offer new and more comprehensive interpretations.

On a more negative side, in this decision the HRC has extended the threshold for a real risk of irreparable harm to include a concept of “imminence” to show a substantive violation of the right to life. As noted by Foster and McAdam (2022), this concept was not included in the original protection of human rights, nor in the protection of refugee, and this can cause confusion in the future protection of FCMs. Indeed, it could require not only demonstrating the real possibility of irreparable harm (already difficult in the multicausal context of FCMs), but also proving that this harm is imminent, which is almost impossible for FCMs who have not moved due to disasters but because of slow-onset events. To solve this interpretative issue, the two authors propose “foreseeability of harm" as a more appropriate framework, consistently with the jurisprudence of refugee law, which only requires “a degree of speculation about future harm”.

Anderson et al. (2020) argue for a similar approach, drawing a parallel to the "well-founded fear test" in refugee law. Further, they emphasize that in the context of slow-onset climate events, future rulings must always interpret the situation's context, warning against overly prescriptive rules, highlighting that refugee law focuses on the real risk of harm, not on certainty and that, even if potential interventions might exist, these “may not be sufficient to reduce an existing real risk” that could manifest in the future.

In conclusion, it is undeniable that the UNHCR ruling is a great starting point for future protection of FCMs as it lays the foundations to recognize the effects of climate change as possible cause of violation of human rights. This acknowledgment is crucial for integrating all the different international legal instruments into a comprehensive framework aimed at safeguarding FCMs.

However, the ruling is not as revolutionary as it could have been. As Behrman and Kent (2020) argue, even if it recognized and confirmed the possibility of being considered a person of need of protection in extreme environmental condition, the “bar […] is set too high for reaching the necessary conditions to engage protection under the ICCPR”. Also, it poses a specific problem regarding the imminence requirement, raising concern about what would happen if FCMs will not receive protection until the evidence of a violation of the right of life glaringly clear. Indeed, if the international protection is not put in act until “life becomes so difficult to sustain that it causes suffering and a loss of dignity” we would have already reached a stage where the inhabitants “would have long since moved or be dead”.

Additionally, there is a pressing need to extend protection beyond only individual cases and personal risk, as the current refugee and human rights frameworks prescribe, to situation where entire communities are affected

by the devastating effects of climate change. It is impossible for climate change to discriminate and, as the authors argue “it is difficult to imagine a case where an individual or defined group within a geographic area will experience the effects of climate change in ways that go beyond general conditions”. In the case the negative effects do actually discriminate, either because governments choose to protect only certain segments of the community or because they lead to the escalation of violent conflicts, the protection of FCMs would be rooted in classical instruments of international protection and their protection would not be directly linked with climate change (Behrman, Kent, 2020).

In my personal view, future interpretation about the protection of the right to life and the triggering of the non-refoulement principle have enough scientific evidence to be triggered before the complete submersion of an island or before desertification make countries inhabitable or before extreme climate events cause the death of entire communities. As highlighted in the introduction, the IPCC already gives human displacement as a high probability event in both cases of slow-onset environmental events and natural disaster. Given the insufficiently radical actions taken to mitigate climate change in the current situation, adaptation strategies such as migration should receive deeper consideration from the international community. Waiting for the worst possible outcomes before taking action to protect individuals poses a threat to their life and dignity, even if these threats are not “imminent”. Therefore, the threshold of risk of real harm should be reconsidered considering both possible and real future scenarios, rather than just focusing about a not-so-dangerous present.

Additionally, as observed in the first part of this chapter, the principle of environmental justice underscores the responsibility of developed states and their GHGs emissions in the displacement caused by climate change.

Future jurisprudence and the evolution of the international framework should address this responsibility, incorporating environmental justice's principle with human rights law to guarantee an effective and fair protection of FCMs.

1.3. Future and proposal

Given the gap in the international legal framework analysed this far, academics have proposed various solutions to establish a protection framework for FCMs. These proposals range from standalone treaties to the extensions of existing frameworks like the Refugee Convention or the UNFCCC through new protocols, regional solutions, and the extension "of the mandate and funding of the UNHCR" (Rosignoli, 2022).
Other practical resettlement proposals are based on environmental justice, such as the already discussed Ahmed's model based on GHGs emission.

Further suggestions involve the use of "soft law"[13]. Like Betts (2010) explains, soft law "can provide clear and authoritative guidelines in a given area, without the need to negotiate new binding norms". This approach is based on the idea that "relevant human rights norms already exist; they simply require consolidation and application, and a clear division of operational responsibility between international organisations".

Ferris and Bergmann (2017) note that soft law has potential in the protection of FCMs as it's easier to negotiate, can involve different actors, such as legal experts and important stakeholders, rather than just states, in the drafting of documents, and it can be changed easier than hard law instruments, offering better flexibility "in responding to dynamic situations", and it's already effectively used in some migration situations. An example is "The Guiding Principles on Internal Displacement", which were "drawn from existing international law," used by many governments as the basis for national laws and policies on IDPs and considered "one of the most effective soft law mechanisms", Future development of soft law

[13] Soft law is described by Shelton (2009) as being more a political than a normative instrument, as, if violated, raise mainly political consequences. In general, soft law refers "to any written international instrument, other than a treaty, containing principles, norms, standards, or other statements of expected behaviour"

for FCMs can be inspired by this example .

However, the authors underline that soft law "must be translated into policy and practice in order to make a difference in the lives of people affected by climate change". This may not happen if soft law is not complemented by hard law's instruments or if there is not a strong "implementation leadership" or sufficient regional agreements .

An existing soft law instrument in the field of FCMs is the already discussed Nansen Initiative, which has brought the topic into the spotlight of the international political agenda, but its recommendations have not yet been implemented by the majority of supporting states.

Predicting where the future will take the protection of FCM is challenging, but creating some as hoc instruments seems to be desirable, at least by various international actors, who recommend immediate action to create a framework that protect FCMs, developing new strategies, and closing the gap in the existing scenario. Examples of support new legal instruments would receive include:

- The Nansen Initiative recommends promoting "policy and normative development to address gaps in the protection of persons at risk of displacement or displaced across borders", and that the TFD has invited UNFCCC parties to formulate "national and subnational legislation, policies, and strategies"
- The Environmental Justice Foundation (EJF, 2021) recommends creating "a new legal framework […] to ensure a rights-based approach and give clarity to the legal status of 'climate refugees'. A new international agreement must be developed which lays out the rights and protections due to those forcibly displaced by the climate crisis, and the duties and obligations of third parties and sovereign states to uphold those rights".

- The IOM (2021), in its recommendations for the future of FCMs, says that it "will support the development and implementation of innovative migration policies and practices, including planned relocation".
- The UN Network on Migration (n.d.) recommends "States to include pathways for regular migration in their climate change mitigation and adaptation strategies, which enable labour mobility and decent work, human rights and humanitarian admission and stay, family reunification, education, private sponsorships, and visa waivers, to support communities in building resilience to climate change and adapting through mobility"
- ActionAid recommends the creation of a "Framework to Protect Climate Migrants […] that enjoys support from governments as well as a diverse range of stakeholders and civil society" (Bose, Singh, 2021)

I will now analyse the three main kind of proposal most common in the academic literature: amending the refugee convention, amending the UNFCCC, and creating a new framework.

1.3.1. Amending The Refugee Convention

One of the most common proposals to create a legally binding protection framework for FCMs is to amend the Refugee Convention to include them in the definition of refugee. Understandably, extending the protection under the Refugee Convention to FCMs would provide them with significant rights, as that of "employment, education, housing" (Argyle, 2023), and would unequivocally trigger the non-refoulement principle. Additionally, many "countries already have domestic law implementing these provisions" (Warren, 2016).

Some proposals focus on adding vulnerability to climate change in the list of factors that ensure refugee status under Article 1A(2), while others propose loosening the definition of a refugee (Argyle, 2023). For example, at the state level, in 2006 the Maldives Ministry of Environment, Energy and Water proposed amending the Convention to include the definition of climate refugee in that of article 1A(2). Similarly, in 2009 the Bangladesh Finance Minister proposed a revision of the convention, noting that it could be possible as other revision had already occurred in the past (McAdam, 2011)

To demonstrate the possibility of extending the refugee definition, the Cartagena Declaration and the Organization Of African Unity Convention (OAU) are often taken as an example. Although neither mention climate reasons explicitly, they expand the definition to include those fleeing from countries affected by "events seriously disturbing public order". This offers a flexibility in the interpretation that could be used to "include populations that are displaced by climate change" (Adeola, 2022), and shows that a possibility to extend the protection of refugee is possible, at least at regional level (Neef, Benge, 2022).

As I have emphasized throughout this chapter, no single instrument taken alone can create a comprehensive legal framework for FCMs, and under this idea the potential expansion he of the refugee definition is strictly linked to other international law instruments. For example, Keane (2003) explains how the definition contained in the Refugee Convention may be expanded in line with human rights law, recognizing the denial of these rights as a cause of becoming a refugee. This includes rights declared in the ICCPR or the ICESR that could be violated in the context of climate change, such as the right to "freely their natural wealth and resources" and the violation of human rights when people are deprived of their means of subsistence.

Jolly and Ahmad (2014) argue that a new protocol to the Refugee Convention dedicated to "Global Climate Refugees" should address several issues: the possibility to "seek gainful employment", the provision of "basic education" for children, "additional protection" in case of emergency, the adaptation of "domestic legislation", the provision in case of conflict between national and international law, ensuring "the principle of non-refoulement", promoting climate solution for in-situ adaptation to avoid overwhelming national borders, expanding the mandate of the UNHCR, and including In the organ for the implementation of the protocol the UNEP and the IPCCC

However, even if the international community were to overcome the current limitations of the Refugee Convention and create an additional protocol to include FCMs in the refugee definition, there are several practical and ethical problems.

One practical problem is the evident lack of will among international actors, including the UNHCR. This reluctance is often explained with the danger of reopening negotiation about refugee that in general may be more counterproductive than beneficial. Indeed, there is a risk of weakening the

Convention (Behrman et al. 2018), because by reopening the negotiation parties could end up loosening the protection of current refugees rather than expanding it to other categories (Warren, 2016) or could end up not signing the latest ratification, thereby diminishing its legal value or restricting future interpretation of who qualifies as a refugee. In the worst-case scenario, reopening negotiations "could altogether lead to the rejection of the Convention" (Adeola, 2022).

Additionally, there is a moral issue connected with extending refugee rights only "to a specific sub-population of migrants distinguished on the ground of the cause of their displacement". Other migrants may face similar risks but due environmental reasons or for reasons already recognized by the convention, and the choice to leave them out is totally arbitrary (Mayer, 2016).

Furthermore, extending the Convention may be resisted by state governments fearing threats to their national borders (Williams, 2008)

Other problems are related to the actual structure of refugee protection, which may not be suitable for FCMs. For example, the burden sharing mechanism that exist in the current refugee crises management is solely based on soft law, as there is no practical way prescribed by the Convention, while burden-sharing could be crucial managing FCMs, especially considering environmental justice principles (Argyle, 2018).

Moreover, the protection offered by the Convention is based on individual need, while climate change does not discriminate and impact entire communities, meaning that any new protection for FCMs should account for "the needs of collectives and relocate entire communities together where possible" (Argyle, 2018).

1.3.2. Protocols to the UNFCCC

Considering the significant "resistance amending the 1951 Refugee Convention" (Manou et al. 2017), another common proposal in the academic community is to create new protocols under the UNFCCC to establish a legal framework for the protection of FCMs.

The UNFCCC framework is more suitable for FCMs for several reasons. One of them being environmental justice the Common But Differentiated Responsibility principle, which is recognized by the UNFCCC. This principle would allow the resettlement of FCMs to be based on a burden-sharing approach where developed countries, "because of their historical contributions to climate change and their increased capacity to respond to climate change", would shoulder a larger responsibility. In this way, the same "obligations employed in the mitigation regime" of climate change would be applied to the management of FCMs flows (Argyle, 2018).

Further, as Warren (2016) argues that the UNFCCC has "essential institutional capital that would aid negotiations" if displacement is treated as a "climate change issue". This would lead all "climate-related issue", including displacement, to be discussed within a single space, maximizing "negotiation flexibility" and coherence of discussion.

A concrete proposal comes from Biermann and Boas (2008) who proposes "a separate, independent legal and political regime created under a Protocol on the Recognition, Protection, and Resettlement of Climate Refugees to the United Nations Framework Convention on Climate Change". This protocol would be rounded in environmental justice principles, like the CBDR, linking the protection of FCMs (although the authors morally believe that the term "refugee" should be applied to them, I would like to acknowledge that it wouldn't be a legally possible definition under this proposal, as it has nothing to do with the Refugee

Convention and FCMs wouldn't be entitled with a refugee status) with the climate change international framework. The authors outline five ways in which the protocol would work:

1. *Planned and Voluntary Resettlement*: the primary aim of the protocol would be to support "planned and voluntary resettlement and reintegration of affected populations", rather than merely answer to emergency and disaster relief as "there is no need to wait for extreme weather events to strike and islands and coastal regions to be flooded".
2. *Permanent Immigration*: since their situation is different from that of political migrants, and FCMs cannot return home like them without facing some risks they "must be seen and treated as permanent immigrants to the regions or countries that accept them"
3. *Collective Needs*: unlike the current protection regime based on individual risk, the protocol should be constructed upon the "need [..] of entire groups of people"
4. *Support for Local Governments*: the protocol would include provision to support "governments, local communities, and national agencies to protect people within their territories."
5. *Global Responsibility*: the protocol should picture the protection of FCMs "as a global problem and a global responsibility", taking in consideration the responsibility of the developed countries and consequently adjusting "their share in financing, supporting, and facilitating the protection and resettlement of climate refugees"

In practice, Biermann and Boas (2008) propose a fund specifically to support "inhabitants of developing countries" (as "wealthier countries will be able to support their own affected populations") who are party of the protocol and are "determined in need of relocation due to climate change or threatened by having to relocate due to climate change". The fund

would operate reflecting the CBDR principle, as it would mainly be financed by developed countries (Kuusipalo, 2017), and it would support orderly relocation through various means, including "financial support; inclusion in voluntary resettlement programs […]; retraining and integration programs; and, in the special case of small island states, organized international migration". This proposed type of founding reflects the principle of CBDR as it would be financed by developed countries (Kuusipalo, 2017).

Warren (2016) gives another proposal, which is built upon the "Climate Change Displacement Coordination Facility" proposed in the preliminary document of COP21. While not included in the final Paris Agreement, this proposal offers a possible solution to include FCMs within the UNFCCC framework. Warren proposes to implement this Facility, which would be founded through the Green Climate Fund.

The Facility should have both short-term and long-term functions.

In the short term it would operate by:

- coordinating with the Nansen Initiative and its guiding principle to "support regional soft-law agreements to address early displacement" and operating as "the clearinghouse under which nonbinding agreements are negotiated to ensure that climate change migrants are adequately protected"
- conducting research and collecting data to understand if there are some areas that could be more "suitable for accepting displaced climate change migrants"
- funding internal displacement and in-situ adaptation strategies so to "strengthen local community […] by improving resilience and planned migration"

While in the long term it should act towards developing hard law. It could serve as a platform for negotiating "regional and bilateral agreements between states […] to address climate change displacement" or by assisting the creation of an international treaty "if regional agreements do not develop quickly enough".

In its proposal Warren explains that, ultimately, the Facility should cooperate with the UN Security Council "to protect the rights of displaced people". Indeed, the UN Security Council should be the fundamental actor in the legal protection of their rights. As the author notes, the Security Council could determine that climate change is a threat to international peace under article 39 of the UN Charter[14], thus bringing every issue related to FCMs under its jurisdiction. This could give the possibility to operate through "economic sanctions against a noncomplying party".

Moreover, Warren proposes that the Security Council could create "a subsidiary body to act as an enforcement arm of the Coordination Facility" or establish "its own climate migration requirements under an activist legislative role". However, as the author notes, this two possibility, are very difficult, if not impossible, to implement: the first one would violate the "delegatus non potest delegare doctrine", which restricts the Council from delegating any work to another body as it's in itself a body to which other actors (the States) have delegated work; the second one would probably not be accepted by UN member states as it might be perceived as a threat to state sovereignty. A much more feasible possibility is that "the Coordination Facility could simply handle enforcement on its own terms but refer problematic cases to the Council" (Warren, 2016)

[14] Article 39 of the UN Charter declares that "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security." (United Nations, 945)

Despite the potential effectiveness of a UNFCC protocol, it poses considerable problems. One between all is the likely lack of willing of developed countries to participate due to “major financial commitments”. Also, as there is already reluctance of state parties to commit to CBDR approaches, a new protocol to manage FCMs would probably fail in creating any effective response as it would require significant compromises (Argyle, 2018). Evidence of this hesitation is the refusal by state parties of the Facility proposed within the UNFCCC itself, which was a much softer version than the one proposed by Warren. This suggests that even a moderate approach would require substantial compromises to be implemented.

1.3.3. A New Treaty

Another proposal to address the protection of FCM rights is that of a multilateral treaty, independent from existing international instruments, in an analogous way to the Refugee Convention. This approach would grant non-refoulement protection and provide "basic human rights, such as access to the judiciary and public education" (Warren, 2016).

The evolution of human rights law is not impossible as its interpretations are always evolving. Moreover, the possibility of new treaty is not utopic as in the XXI centuries there were two new human rights treaties: The Convention on Persons with Disabilities in the 2006, and the Declaration on the Rights of Indigenous Peoples in the 2007 (Human Rights Commission Cayman Islands, n.d.). This means that there is a "possibility of normative development" in the human rights' legal framework, which still contains multiple legal gaps (Behrman et al. 2018), and the extension of it to FCMs through a creation of a new international treaty.

Argyle (2018) consider the creation of a new treaty as the best possible scenario, arguing that adding "mechanisms relating to CIM to existing agreements may compel parties to leave such agreements", as suggested in the case of a protocol to the Refugee Convention, while a "bespoke agreement" may force the international community to address the issue and take adequate measures without compromising already existing human rights framework concerning other issues.

Noorda (2022) highlights that if the international community wants to cooperate and act about the FCM issue, the creation of a "rule-based framework" is imperative. She argues that to establish such framework a treaty is necessaire, as it would ensure "that States will take domestic measures", would discourage any "free-riding" behaviours, and would

make States "accept principles such as the balance of interests […] burden-sharing and differentiated responsibility".

Argyle (2023) notes that a new treaty should integrate all the various sources of international law analysed in this chapter "to fill in one another's gaps". This means that refugee law, environmental justice, and human rights law should be incorporated all together to create a comprehensive protection, ranging from responding to both cross-border and internal migration and their non refoulement protection to burden sharing, CBDR approaches, cooperation principles and the protection of every fundamental right of the person, starting from the right to life.

Without providing a specific proposal of a complete treaty, Argyle imagines the main characteristics that it should have.

- *Recognition of Differentiated Responsibilities*: he underscore the importance of acknowledging the different responsibility that countries have in contributing to climate change as a cause of FCM. This recognition would finally provide the "foundation for CBDR in this context" and create an obligation for the international community to act on the problem.
- *Identification of Vulnerable Communities*: similarly to Biermann and Boas approach, the treaty should include "a mechanism to establish particular communities or states […] vulnerable to climate change" so that they could be included in a list of countries that are entitled of support.
- *Anticipatory Action*: the support would not be limited to those countries that "are currently producing climate-induced migrants" but would be expanded to those countries that are experiencing "slow-onset environmental degradation". This would facilitate not only future protection of FCMs rights but also support for "in situ adaptation".

- Determining Host Countries: to identify those countries that can actually receive FCMs, their "responsibility according to CBDR" should be considered and the "number of migrants to receive" should be differentiated according to it, similarly to the model proposed by Ahmed. Still, the final destination of FCMs should respect their autonomy and be based on the "migrant's preferred host nation".

One of the most famous and complete proposal for a new international treaty is the "Draft convention on the international status of environmentally- displaced persons" (Prieur et al., 2008) developed by the University of Limoges in the 2008. This draft aims to "institute new rights, a specific status and implementation mechanisms" (Prieur, 2010), is inspired to the rights already recognized to current refugee and human rights law and applies to both internal and international displaced people. In the preamble it recognize the legal gap that FCMs face and the importance of the CBDR principle, emphasizing the "duty of the international community of States to organize their solidarity" (Prieur et al., 2008).

The objective of the convention, disclosed in Article 1, is that of establishing "a legal framework that guarantees the rights of environmentally-displaced persons and to organize their reception as well as their eventual return, in application of the principle of solidarity". Article 4 explains the solidarity principle, prescribing that "States and public authorities and private actors must do the utmost possible to accept environmentally displaced persons and contribute to the financial efforts required".

The principle of non-refoulement ("non-expulsion") is declared in Article 8, which prescribe State Parties to "not expulse a candidate who has the status of an environmentally displaced person".

The rights guaranteed to displaced persons, and those threatened with displacement, reported in Chapter 3 and 4, are inspired by the ones already recognized in the Refugee Convention. Both recognized internal and international displaced migrants, and also those who have applied for the recognition of these status (similarly to the current asylum seekers), are entitled of these rights, which include:

- *Rights to information and participation*: they have the right to access "information relating to environmental threats and critical situations implied by these threats" and to "participate in the determination of policies and programs to prevent environmental disasters and to take charge, at the outset or throughout, of the consequences" (Article 9)
- *Right to displacement*: they have the "right to move within or outside of their home State" when faced with "environmental degradation that inexorably impacts their living conditions" (Article 10)
- *Right to refuse displacement*: they have the right to refuse to move "at their own risks and peril" (Article 11)
- *Various rights*: as the right to assistance, water, food aid, health care, juridical personality, civil and political rights, housing return, prohibition of forced return, respect for the family, work, education and training, cultural specificity, property and personal possessions, maintain link with pets (Article 12)
- *Right of nationality*: they have the right to "conserve the nationality of his or her State of origin" or, if requested, they should be helped being naturalized by the host State (Article 13)

The draft convention prescribe each State Party to "create a national commission on environmental-displacements to hear status claims", which

should be formed by “independent […] experts in the field of human rights, the environment and peace” (Article 17) and those should accept or reject the “claim for the status of an environmentally-displaced person […] on an individual basis”. The decision can be appealed to the High Authority (Article 18).

The draft convention also proposes the creation of several institutions:

- *The Conference of Parties*: responsible for examining and assessing “the policies adopted by the Parties […] and the legal and methodological steps they follow to ensure aid, assistance, and the welcoming of environmentally-displaced persons in order to further improve their situation”. (Article 20)
- *The World Agency for Environmentally-Displaced Person*: which shall become a “specialized agency of the United Nations” and shall “oversee the application of the present Convention” (Article 21)
- *The High Authority*: which should be entitled with different powers, like managing the appeal to the decisions, solving any problem of interpretation, assessing “the compliance of national provisions” and proposing possible recommendations to the Parties or amendments to the Conventions. Its decisions are “final and binding on State Parties” (Article 22)
- *The World Fund for the Environmentally-Displaced*: which shall “provide financial and material assistance for the receipt and return of the environmentally-displaced.” (article 23)

Chapter 7 outlines the implementation measures, which are based on cooperation between “international and regional organizations” (Article 25), bi-lateral or regional agreements (Article 26) and National Implementation (Article 27)

Another interesting proposal for a stand-alone treaty comes from Hodgkinson et al (2010), who propose a framework where both international FCMs and internally displaced ones benefit from legal protection, providing them with "temporary and permanent relocation". However, the protection would differ between internal and international displaced persons: in line with current refugee laws, only international "refugees" would be eligible for the protection of the international community, while, to maintain state sovereignty, internal displaced persons would rely on their nation's responsibility. Assistance would be provided only to developing state parties requesting "for internal or international resettlement assistance".

In any case, both categories would enjoy certain provision, such as the provision of "non-discriminatory international assistance", which, in the case of internal displacement, it would be "shared between the home state and the international community".

For internal displaced persons, the proposal emphasises the support of "governments, local communities and agencies in protecting people within their own territory", while for the international ones the recognized rights would be similar to the ones of the Refugee Convention: displaced persons would enjoy the non-refoulement principle and they would be equipped with humanitarian aid until they either acquire a new nationality or return home.

The application of those rights would not change between temporary or permanent migrants but would be "gradually accrued based on the duration of displacement", so that "state obligations […] would remain flexible and responsive to environmental changes".

An interesting feature of the proposal is that of creating special protection for SIDS as they are in the greatest position of vulnerability while being

the “smallest contributors to climate change”, facing a real possibility to disappear in the near future. The proposal is based on the fact that SIDS and host state should create bilateral agreement based on three main principles: “proximity, self-determination and the safe-guarding of intangible culture”.

The authors describe a detailed structure of the organisation (the “Climate Change Displacement Organisation), which would consist of four bodies: “an Assembly, a Council, a Climate Change Displacement Fund and a Climate Change Displacement Environment and Science Organisation” along with “regional Council committees”. The main governing body would be the Assembly, made up by a delegate for each State Party, which would meet every two years and would “ratify developed state party's financial contributions”. The Council would deal with assessing the request for assistance and guiding the operation of the Organisation, taking its decision with the guidance of the Fund, the Science Organisation, and the regional committees. The contribution to the Fund would follow the CBDR principle.

Although there are other proposals for international conventions on the protection of FCM, they all share the same fundamental aspects: they are based on the refugee convention, they try to cover both internal and international displacement and, the most important thing, they are constructed upon the idea of intersecting all of the different principles currently existing in international law that deals with displacement, climate change, and human rights. Indeed, a new instrument should integrate those principles to create a new framework specific to the FCM, considering the peculiarity of this type of migration, starting with the recognizing of all the environmental justice principles, especially the CBDR one, so that the responsibility of developed countries is crystallized in a legally binding agreement that oblige them to act. Of course, all of

this should be done under the idea that every person is entitled with basic human rights, and their protection should be extended beyond their home state in case of international displacement, enabling FCMs to reclaim their rights, for example, in cases of repatriation (like in the Ioane Teitiota case).

Taking all of this together under a singular, independent, multilateral, treaty would provide the most comprehensive protection to FCMs and solve the observed legal gap.

However, in reality, "achieving any form of multilateral agreement […] will be challenging due to the lack of political will" (Argile, 2023). Indeed, as Warren (2016) suggests, it would likely fail to happen for at least three different reasons:

- the negotiations would be impossibly slow and would be probably concluded after some serious climate change effect necessitate emergency responses for FCMs
- given all the "political and time constraints", the final result would not be like the proposal made by the University of Limoges or Hodgkinson, but would rather be a much weaker convention, probably failing to "secure the full scope of refugee-like rights for climate migrants"
- it would face incredible resistance by developed countries

As McAdam (2011) acknowledges, a treaty "is necessarily an instrument of compromise" and requires strong political will "to ratify, implement and enforce it". Unfortunately, the current international political climate does not suggest such willingness. On the opposite, there currently is a huge diffusion of nationalism and anti-migratory sentiments, meaning that a new treaty that would protect foreigners through a supra-national actor is unlikely to be accepted.

1.4. Final Comments

Ending this chapter, so that I can move on to describe the specific situation in the European Union, the gap that exists in the current international framework for the protection of FCMs is evident, as it is evident that each one of the possible evolutions suffers from a number of problems, mainly connected with a scarcity of political will.

Realistically, there would be no new hard law instruments in the near future that will protect FCMs. However, environmental degradation is continuing to happen and will continue to increase its velocity in making certain part of the world inhabitable, meaning that sooner than later the topic of FCMs will demand deeper consideration, even if, given the current situation, it will be correctly discussed only when an emergency response will be needed.

Further, the scarcity of political will not concern only FCM but climate change actions in general, as it is shown by the difficulties of developed countries in recognizing the CBDR principle, which is currently slowing down any proactive action in the mitigation of climate change (Argyle 2023).

In this situation, as also Ferris and Bergmann (2017) note, the action of the civil society is crucial to carry on the discourse surrounding FCM and climate change. Without a bottom-up demand for the development of a framework for the protection of FCMs, governments would never act up on the problem. Civil society can ensure the accountability of governments and can always provide the international scene with new and innovative solutions, which can range from e hard law proposal to various initiative to keep the attention up on the issue.

The most current concrete hope about the evolution of FCM's international legal framework can be ascribed to the Advisory Opinion that the UNGA

(United Nations General Assembly) has requested to the International Court of Justice in March 2023 about the "obligations of States in respect of climate change" and what are "the legal consequences under these obligations for States" (UN General Assembly, 2023). In the case in which the ICJ opinion confirm "that existing agreements do impose binding obligations onto parties to respond to climate change, parties may subsequently be deemed to be non-compliant with those agreements" (Argyle, 2023), having consequences on the protection of FCMs if they are seen as the consequences of the non-compliant State action in the context of climate change. In the moment of writing this (27 May 2024), the latest evolution[15] given by the ICJ relates to the possibility of submitting written statements regarding the questions, with a deadline fixed for 24 June 2024. After that, the oral proceedings will start in October 2024, and the final advisory opinion delivery is expected in 2025 (International Institute for Sustainable Development, 2024).

[15] The latest developments about the case can be seen at the following page: https://www.icj-cij.org/case/187

2. CHAPTER 2: THE EUROPEAN LEGAL FRAMEWORK

In the uncertain scenario delineated thus far, the European Union (EU) has the potential to develop a robust framework for the protection of FCMs grounded in solidarity and human rights obligations. By taking an active legislative role, the EU can set an example for other regions of the world. As Scissa (2022) suggests, "a common and uniform approach to the climate change migration nexus could support the Union's efforts to act as a global leader and provide much-needed assistance to people displaced because of a changing climate."

The first time the EU recognized FCMs was in a 1999 European Parliament document, acknowledging that the number of “environmental refugees” was surpassing that of “traditional” ones. This situation was recognized as a potential threat to the EU, posing pressure on its justice policies, development assistance, humanitarian aid spending, and security (Karayiğit, Kılıç, 2021; European Union, 1999).

Jean Lambert was the first Member of the European Parliament (MEP) to advocate for the inclusion of official protection for FCMs into EU legislation in 2002. This idea was further supported by the Green Party in 2008, which proposed the creation of a “working group on the protection of the rights” of individuals displaced by climate change (Manou et al., 2017).

Shortly after, the Stockholm Programme text recognized the interconnection between “climate change, migration, and development,” and the Commission was invited to analyse “the effects of climate change on international migration, including its potential effects on immigration to the Union” (Council of the European Union, 2009).

Following this, the Commission incorporated a brief reference to FCMs in the text of one of the main instruments used to harmonize the EU’s migration policy, the “Global Approach to Migration and Mobility”

(Manou et al., 2017), recognizing that “addressing environmentally induced migration, also by means of adaptation to the adverse effects of climate change, should be considered part of the Global Approach” (European Commission, 2011). The following year, an opinion from the Committee of the Regions on the Global Approach called for the need to define “a proper legal framework for those fleeing their country of origin as a result of natural disaster or climate conditions that threaten their survival or physical safety” (Committee of the Regions, 2012).

Some proposals to create a legal framework for FCMs were also put forward by different European institutions. For example, in 2008, the Council of Europe suggested using the UN Guiding Principles on Internal Displacement to develop a global guiding framework for the protection of FCMs. (Apap, 2019)

Despite these various initiatives, there remains “no comprehensive and solid policies and legislative framework” for FCMs (Karayiğit, Kılıç, 2021) as the European Commission has failed to take concrete actions to comprehensively address the interconnection between climate change and migration (Scissa, 2022). This gap is evidenced by the separation between the two issues in the EU’s policy framework. For example, the main instrument for establishing a common ground for climate change policies, the “European Green Deal,” and the one used as a base for managing migration flows, the “New Pact on Migration and Asylum,” were drafted separately, distancing themselves from the real root of the FCMs issue.

The “European Green Deal” makes only a brief reference to FCMs, stating the EU's willingness to work with partners to “increase resilience” against the challenges posed by climate change, including forced migration. Ironically, the New Pact on Migration and Asylum recognizes the necessity for comprehensive policies that integrate migration and climate change issues, emphasizing that these should not be treated in isolation. However, the separate treatment of this issue in two different documents

demonstrates the contrary of what is preached. This inconsistency undermines the EU's efforts to recognize and correctly address FCMs movements, neglecting the strong scientific evidence of their interconnection (Scissa, 2022; European Commission, 2019; European Commission, 2020).

As is often the case with migratory issues, the most concrete action taken by the EU has been to delegate the issue "at the local level of affected countries through mostly development cooperation measures and humanitarian assistance." However, this is only a short-term solution that does not address "the roots of climate migration" nor provide a precise framework for European States (Soddu, 2022). As Manou et al. (2017) state, for the near term, only palliative solutions seem to be on the horizon, with actions that are more reactive than proactive, addressing crises as they arise.

Even though it remains unclear whether FCMs protection will be included in future European policies or legislation, the issue can be connected to broader discussions on migration and asylum policies (Manou et al., 2017).

This chapter will analyse how the current legislative framework offers (or does not offer) potential protection for FCMs, specifically examining three potentially related Directives: the Temporary Protection Directive, the Return Directive, and the Qualification Directive. Additionally, it will explore the European human rights and environmental justice framework, particularly in relation to the European Convention on Human Rights (ECHR).

Future potential evolutions of the protection of FCMs within the European Union will then be considered.

Finally, a specific focus will be placed on Italy and its peculiarities. Among EU countries, only Italy, Sweden, and Finland (for certain aspects) have gone beyond the obligations required by EU and international law by

providing specific protection status related to climate change and natural disasters for third-country nationals who cannot qualify for refugee status or subsidiary protection status. However, the provisions in Finland and Sweden were temporarily repealed after the significant migration flows in 2015-16 (Soddu, 2022).

2.1. The Directives

As proposed by Scissa (2022), three EU directives dealing with migratory issues can be extended to cover FCM circumstances, even though they do not explicitly refer to the environment as a reason for migration or entitlement to international protection and were not originally intended to address it (Behrman et al., 2018; Scissa, 2022). These directives are the Qualification Directive (QD), the Temporary Protection Directive (TPD), and the Return Directive (RD). According to Scissa, these directives make the protection of FCMs "implicit in EU law." However, it is important to note that while regulations explain to Member States exactly how to implement the text within their national borders, directives do not impose specific measures. Instead, directives set out general principles for Member States to follow, leaving significant discretion to national governments. This means that the potential protection of FCMs may vary substantially between different European States.

2.1.1. Qualification Directive

As Behrman et al. (2018) explain, the QD is a crucial EU legislative instrument for asylum policies and refugee protection's harmonization. It was introduced to assert a "common criteria in assessing asylum claims and the extent of protection refugees are entitled to".

The directive's objective is clarified in its preamble (12), aiming "to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and […] to ensure that a minimum level of benefits is available for those persons in all Member States." (Directive 2011/95/EU). The primary context of the QD is about the protection of refugees under the scope of the Refugee Convention, which, as discussed in the previous chapter, does not apply to FCMs. However, another form of protection is regulated by this Directive, i.e. the subsidiary protection.

Although the initial discussions for the directive's draft included environmental disasters as a potential ground for subsidiary protection, and the European Parliament claimed that environmental displaced persons should have been considered in the Common European Asylum Policy, at the end there was no "concrete proposals". (Kolmannskog, Myrstad, 2009)

Subsidiary protection was defined in article 2(f) to be applicable to "a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm".

Serious harms is further defined in Article 15 has having three possible declinations:

> "(a) the death penalty or execution;
>
> (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin;
>
> (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict." (Directive 2011/95/EU).

Leaving alone point (a) and (c), which are clearly distant from the FCMs situation, it might seem environmental disasters or serious climate changes could life-threatening conditions that amount to inhuman or degrading treatment if FCMs return home, as specified in point (b).

However, the Court of Justice of the European Union (CJEU) has specified that subsidiary protection cannot be applied if there is not an involvement of the home State, either through direct involvement or omission of action. Since climate change is not directly caused by states, the first type of necessaire involvement of the State typically does not apply to FCMs. On the other hand, the situation becomes more complex when considering the

absence of action by states, as a State's inaction may exacerbate the harmful effects of climate change on its citizens. (Behrman et al. 2018; Scissa, 2022)

Yet, in the Mohamed M'Bodj v État belge Case (C-542/13), the CJEU opinion specified in paragraph 58 specified that

> "in order for a person to be eligible for subsidiary protection, it is not sufficient to prove that that person would face a risk of being subjected to inhuman or degrading treatment if he were returned to his country of origin. It must also be demonstrated that the risk arises from factors which are attributable, directly or indirectly, to the public authorities of that country, either because the threats to the person concerned are being made or tolerated by the authorities in the country of which that person is a national, or because those threats are *being made by independent groups* [emphasis added] against which the authorities of that country are unable to provide effective protection to their citizens"

underlying the fact that, even in the case of an omission of action, the inhuman or degrading treatment must be perpetuated by a human entity (the authorities or independent groups). This excludes non-human-made threats like climate change effects or, as in the M'Bodj case, illnesses.

In paragraph 35 of the above-cited case, the CJEU further specified that the risk cannot result from a "general shortcoming" in the country of origin. This implies that climate change, which affects everyone indiscriminately, would fall outside the reasons for subsidiary protection under the QD (Scissa, 2022).

More recently, in the 2017 Case (C-540/17) Bundesrepublik Deutschland v Adel Hamed and Amar Omar, subsidiary protection was connected with the articles regarding Dignity in the EU Charter of Fundamental Rights (CFR) and Article 3 of the European Convention of Human Rights (ECHR). The CJEU specified that the high threshold of seriousness

needed to obtain a subsidiary protection can also be met when

> "the indifference of the authorities of a Member State would result in a person, wholly dependent on public support, finding themselves, irrespective of their will and personal choices, in a situation of extreme material deprivation preventing them from meeting their most basic needs, such as food, hygiene, and housing, and affecting their physical or mental health, or placing them in a state of degradation incompatible with human dignity"

This interpretation opens the possibility of applying the subsidiary protection under the scope of the QD to FCMs if State inaction leaves the dangerous environmental conditions caused by climate change to cause extreme material deprivation. This scenario is already occurring, as discussed throughout this thesis. Thus, FCMs could "meet the threshold of serious harm under Article 15(b) QD" (Scissa, 2022)

However, whether this interpretation will extend to FCMs is uncertain since the CJEU has not yet dealt with cases on this topic. Though, in the Hamed case the final ruling imposes to Member State the non-refoulement principle in case "the living conditions that would await the applicant […] expose them to a serious risk of inhuman or degrading treatment" under the concept of human dignity as expressed in the rights of ECHR and CFR. This means there is a possibility that, if the conditions in the home state of an FCM are particularly severe (e.g., in the case of submerged SIDS), the CJEU may rule in favour of applying subsidiary protection under the QD. Probst (2023) draws a parallel with two European Court of Human Rights (ECtHR) cases concerning medical issues: D. v. the United Kingdom and N. v. United Kingdom. In both cases, the refoulement of applicants with serious medical conditions was considered a violation of Article 3 ECHR because inadequate medical infrastructure in the home country would cause physical suffering and threaten dignity. Probst argues that a similar reasoning might apply to future FCM claims, especially if there are

extraordinarily high risks of “impacts on socio-economic rights”, which are also threatened by insufficient medical infrastructure. Indeed, a lack of infrastructure:

1. Is general to the state and not specific to the applicant, even though the threat remains individual in the case of illness, making it easier to accept as a case for subsidiary protection.
2. Does not discriminate, although this point is debatable as people with more resources could potentially find alternative cures.
3. Is not directly connected with torture, violence, or war but is based on socio-economic rights, such as the ability to be productive, sustain oneself, and live in decent conditions, which are similarly threatened by climate change.

Despite these similarities, the differences between threats caused by inadequate medical infrastructure and climate change effects are significant. In particular, the former can be directly attributed to state inaction, aligning with the QD’s conditions, while climate change, though human-caused, cannot be directly attributed to a State’s action omission. Ultimately, the conclusion is the same: there is no certainty about how European Courts will rule on cases involving FCMs. However, according to the current jurisprudence regarding the QD and its related rights, the threshold for obtaining subsidiary protection would remain extremely high.

2.1.2. Temporary Protection Directive

The Temporary Protection Directive (TPD) was created “to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin”. The Directive applies to displaced persons who cannot return under “safe and durable conditions because of the situation prevailing” in their country. In particular, the TPD outlines two scenarios

under which this protection is applicable:

> "(i) persons who have fled areas of armed conflict or endemic violence;
>
> (ii) persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights" (Directive 2001/55/EC).

Leaving out the first scenario, which could be a condition exacerbated by climate change but is not a direct reason for which FCMs flee, the recognized connection between climate changes threats and human rights violation suggest that FCMs' protection could be considered under the scope of TD due the second scenario. Indeed, the consequences of climate change can create situations where people are at risk of generalized violations of their human rights (Karayiğit, Kılıç, 2021; Scissa, 2022), as highlighted in the previous chapter.

Additionally, there is another possibility, connected with a pure semantic context, under which FCMs could be protected under the TPD: the Directive uses the phrase "in particular", implying that, if the text is interpreted in an extensive and progressive way, it can be extended beyond the two explicitly listed scenarios to include other causes of migration, such as those "associated to an adverse environment" (Scissa, 2022).

Fornale (2022) notes that the text of the Directive is sufficiently open-ended to encompass "human rights violations due to climate change". The flexibility of the directive is also confirmed by Article 7(1), which gives to Member States the possibility to "extend temporary protection as provided for in this Directive to additional categories of displaced persons" (Directive 2001/55/EC).

Despite its potentiality, the TPD was never utilized, with the notable exception of Ukrainian refugees after the Russian invasion[16]. Its

[16] For a brief insight about the issue: https://www.euronews.com/my-europe/2022/03/03/eu-countries-agree-to-trigger-a-never-used-law-to-host-ukrainian-refugees

underutilization is strictly connected with the challenges surrounding its activation, primarily because it involves a "highly politicized process" and "the absolute discretion of the Council in determining the actual existence of a mass influx of displaced people" (Scissa, 2022). The activation for Ukrainians was relatively straightforward due to the widespread political consensus among EU Member States about their protection.

Indeed, for the TD to be applied, a "case-by case" decision based on "a qualified majority of the Council" is required, meaning that, potentially, "if a majority decides that a natural disaster calls for invoking the Temporary Protection Directive mechanisms, it is free to do so". However, as mentioned above, this requires significant political mobilisation of Member States (Kolmannskog, Myrstad, 2009), which would be challenging given their generalized reluctant to open borders to foreigners. Additionally, it is really difficult to identify a flow of migrants that respects the condition for a "mass influx", defined in Article 2(d) as the "arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area" (Directive 2001/55/EC). Probably, given the characteristics of current climate change-induced movements, it is unlikely that there will be many cases of mass influx to the EU of FCMs (Scissa, 2022).

Another issue is the duration of protection provided by the TPD, which is limited to just one year. This period is inadequate for FCMs whose home countries have become uninhabitable due to climate change and who cannot be expected to return any time soon, if any time ever. This contrasts with people fleeing wars or occupations, which may be shorter-term crises. Thus, the TPD is not suitable "for the determination of individual status, nor for durable situations, nor for refugees fleeing slow-onset climate-induced degradation in the country of origin" (Karayiğit, Kılıç, 2021).

In point of fact, even though the TPD could theoretically be easily applied to several types of migration, including FCM, a more "flexible and

immediate protection mechanism such as subsidiary protection will be more relevant for individuals displaced due to environmental disasters" (Kraler et al., 2017).

2.1.3. Return Directive

The Return Directive (RD) "sets out common standards and procedures to be applied in Member States for returning illegally staying third country nationals" in accordance with community law and international law, including the non-refoulement principle. Indeed, it declares that if the removal would violate the non-refoulement principle it should be postponed. Additionally, it allows Member States to "refrain from issuing, withdraw or suspend an entry ban in individual cases for humanitarian reasons". Specifically, Article 5(4) states that Member States can "grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian, or other reasons to a third-country national staying illegally on their territory. In that event no return decision shall be issued" (Directive 2008/115/EC).

In this context, the non-refoulement principle may apply to Forced Climate Migrants (FCMs), as discussed in the previous chapter. Member States may choose to interpret the RD expansively and apply Article 5(4) to FCMs if their return is considered unsafe for humanitarian or compassionate reasons. However, this decision remains discretionary and falls within the competence of individual Member States (Scissa, 2022; Morgese, 2017).

There is also an issue with applying only a removal ban to FCMs for humanitarian reasons. Such a ban would not confer any protection status per se, as Member States are free to grant merely a temporary authorization to remain in their territory. The RD does not impose any "obligation to grant international protection" (Morgese, 2017), a limitation that also applies to the previously discussed directives.

Regarding the RD, there is not extensive jurisprudence as it grants significant freedom to Member States regarding the return of third-country nationals. However, the CJEU explained in the Abdida case that any Member State should refrain from returning a third-country national whenever there is the possibility that their return may expose them "to a risk of inhuman or degrading treatment" (Case C-562/13). This opens a further possibility of applying the non-refoulement principle in the context of FCMs whenever their situation is considered sufficiently dangerous to present a threat of inhuman or degrading treatment.

2.2. Human rights in Europe: the European Convention of Human Rights and the Charter of Fundamental Rights of the European Union[17]

Both the European Convention of Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union (the Charter) may play a crucial role in the protection of FCMs. This is primarily due to the same reasons discussed for non-refoulement and human rights principles in the previous chapter.

Indeed, both instruments have "played a significant role in establishing the non-refoulement obligation as a European human rights imperative", demonstrating the European Union's potential as "a driving force for the protection of migrants and asylum seekers across the region"(Miras, 2020).

As a matter of fact, Article 19(2) of the Charter states that

> "no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment" (European Union, 2010)

This article, which reflects the non-refoulement principle at the international level, has been established under the ECtHR's jurisprudence about Article 2 (right to life) and 3 (prohibition of torture) (Morgese, 2017).

As a matter of fact, the Charter was written following the rights contained in the ECHR, as expressed in Article 52(3) of the Charter:

[17] The European Convention on Human Rights is an international treaty established by the Council of Europe to protect human rights and political freedoms across Europe. It was drafted in 1950, and it entered into force in 1953. Its jurisdiction is overseen by the European Court of Human Rights and applies to all 47 member states of the Council of Europe (significantly more than the 27 member states of the European Union).

In contrast, the Charter of Fundamental Rights of the European Union consolidates fundamental rights protected within the EU. It was proclaimed in 2000, and it gained a legal binding status in 2009 thanks to the Lisbon treaty. The Charter is inspired by the principles enshrined in the ECHR.

> "this Charter contains rights which correspond to rights guaranteed by the Convention […], the meaning and scope of those rights shall be the same as those laid down by the said Convention" (European Union, 2010)

Hence, as it is expressed by Morgese (2017), the main focus to understand whether the European human rights framework can protect FCMs is to assess "whether, and to what extent, fundamental rights as enshrined in the ECHR and according to the ECtHR case-law, together with Charter provisions" can actually enforce the non-refoulement principle for FCMs.

2.2.1. Right To Life and Prohibition Of Torture

Article 2 and 3 of the ECHR operate similarly to analogous international rights of the Universal Declaration of Human Rights. For example, they require a "minimum level of severity" to be considered violated and to reach the condition of inhuman treatment (Sciaccaluga, 2020) similarly to the high threshold required at the international level.

This principle is derived from several ECtHR cases. For the prohibition of torture, which has always in its background the right to life (Ramos, 2021), one of these cases is the Pretty v United Kingdom[18] case. In paragraph 52 it states that, for a treatment to "fall within the scope of Article 3 of the Convention," it must "attain a minimum level of severity and involve actual bodily injury or intense physical or mental suffering". However, similarly to the international context, to claim a violation of this right someone should be considered responsible for it. This is clarified in the Pretty case, which states that the treatment must come "from conditions of detention, expulsion or other measures, *for which the authorities can be held responsible*" [emphasis added] (European Court of Human Rights,

[18] The case has actually nothing to do with the problem of migration, as it revolves around Mrs. Diane Petty, a British national suffering from motor neurone disease, who expressed a desire to control the manner and timing of her death to avoid the final stages of the disease, which she viewed as undignified and painful.

2002). Nonetheless, the absence of intent does not preclude a finding of a violation, as noted in Labita v. Italy, which stated that “the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3” (European Court of Human Rights, 2000). In reality, in extreme case, neither the actual involvement of the government is necessary, as it’s demonstrated by the ruling in the D v United Kingdom case, in which the ECtHR had detected a violation of article 3 even though “the inhuman and degrading treatment stemmed from factors for which the authorities in that country could not be held responsible” (European Court of Human Rights, 1997)

As previously discussed in this thesis, proving that the treatment endured by FCMs in their home is caused by someone is practically impossible. Governments may lack positive action to mitigate climate change effects, but most of the time the reasons why FCMs move are completely beyond the control of their government, especially in cases of irreversible conditions, as disasters or extremely dangerous slow-onset condition like the submergence of SIDS. One hope lies in the more extensive ruling of the Labita and D cases, and so in the idea that neither a lack of internation nor a lack of involvement of the government “automatically lead to an exclusion of the applicability of Article 3” (Sciaccaluga, 2020). Future cases may consider individual circumstances and sustain a violation of Article 3 if the conditions in the home country are so severe as to cause intense suffering.

However, this is unlikely to be the reality. In the Sufi & Elmi v. United Kingdom case, which involved an applicant from Somali where a severe drought was currently happening during a conflict, the Court explicitly stated that for a violation of Article 3, the State’s lack of resources to address a natural disaster alone was insufficient. Indeed, the drought had only exacerbated an already existing “humanitarian crisis” caused by “the direct and indirect actions of the parties to the conflict” (European Court

of Human Rights, 2011), which was considered the real reason for a violation under Article 3 of the ECHR.

Thus, we return to the starting point: "a violation of Article 3 referable to environmental degradation caused by climate change should be more easily determinable if a deliberate action or inaction by one or more public authorities could be ascertainable" (Sciaccaluga, 2020)

The fact that the ECtHR and the CJEU most often analyse breaches of the right to life in conjunction with other violations, specifically and most often with violations of the prohibition of torture (Ramos, 2021), makes the possibility of a positive ruling in an eventual FCMs case even more difficult. Indeed, it might be relatively easier (though still considering the high threshold required to prove a violation of any human right) to show a 'mere' potential threat to life when returning to a state where conditions have deteriorated so severely that they undermine all essential structures necessary for a functional life, independently of other rights violations.

2.2.2. Environment And Environmental Justice

Even if a right to environmental safety is not recognized anywhere[19], the ECtHR has ruled several times about environmental issues[20]. However, all of these cases were attributed to the lack of positive actions by the Governments, meaning that the violation of human rights did not stem from the environment itself but from the responsibility of someone. This also means that the ECtHR did not report how Member States should meet their positive obligation and did not expand them (Delval, 2020).

[19] In the Charter, Article 37 outlines the right to environmental protection: "a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development" (European Union, 2010). Even though this provides a small opening in the context of climate change, "It does not […] establish any individually justiciable right to environmental protection, or to an environment of any particular quality" (Morgers, Marin-Duran, 2021), meaning that it does not offer any protection to FCMs due to the environmental conditions of their home states.

[20] For a list of cases: https://www.echr.coe.int/documents/d/echr/FS_Environment_ENG

For example, in Özel and Others v. Turkey the violation of the right to life caused by the effects of an earthquake was caused by national authorities as they, even if "fully aware of the risks to which the disaster zone was subject […] had not acted promptly".

In the context of environment specific cases, another possibility under the ECHR for the protection of FCMs lays in the environmental justice principles and, in particular, in Article 41 of the Convention which assures the right to Just Satisfaction:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party" (Council of Europe, 1950).

This principle seems applicable to FCMs if they have lost their homes due to climate change, which, as discussed throughout the thesis, is largely a result of the actions and pollution of developed states.. The real problem in this context is demonstrating the causal nexus between the actions of more developed state and the environmental suffering of developing ones. Even though the IPCC reports have extensively demonstrated that the vast majority of GHGs emission is caused by the Global North, a connection between a specific extreme weather event and the emissions of a particular country cannot be established due to complex interrelations. Indeed, we could wait for science to demonstrate a direct link between human actions and specific weather events, but waiting for this evidence could make remedial actions useless, as we would likely already be in a crisis situation where emergency responses are needed for FCMs (Nuss, 2022).

In the eventuality that this causal link is evident, environmental justice can be invoked in the context of FCMs. This approach is particularly beneficial as it allows us to overcome a significant limitation commonly encountered in cases involving third-nation entities. These cases are generally more

challenging to deal with because

> "in domestic cases the contracting state is directly responsible, because of its own act or omission, for the breach of Convention rights. In foreign cases, the contracting state is not directly responsible: its responsibility is engaged because of the real risk that its conduct in expelling the person will lead to a gross invasion of his most fundamental human rights." (UKHL, 2004)

However, in cases involving climate change, it is possible to hold the contracting state responsible due to "its role in emitting greenhouse gases that cause climate change" (Scot, 2014). Given the evidence of the disproportion between GHGs emission and negative effects, a migrant fleeing from an environmental threat could argue that deporting them would violate their rights, and, as Scott (2014) explained:

> "it would be difficult for the Court to avoid addressing the responsibility of the host state for contributing disproportionately to the adverse environmental impacts of climate change. Equally, it would be difficult for the Court to accept arguments that this responsibility should not have a bearing on the assessment of the proportionality of expelling an individual to a receiving state where to do so would impact adversely on the individual's physical and moral integrity"

2.2.2.1. ECtHR recent jurisprudence on Environmental Justice

Recent ECtHR jurisprudence has increasingly addressed the intersection of environmental justice and human rights. Although this is not the central focus of the thesis and is not directly linked to FCMs, exploring this jurisprudence is essential to understand the current rationale of the ECtHR in ruling on the connection between climate change and human rights violations.

In particular, on April 9, 2024, the ECtHR ruled on two notable cases: “Duarte Agostinho and Others v. Portugal and 32 Others” and “Verein KlimaSeniorinnen Schweiz and Others v. Switzerland.” In both cases, the plaintiffs argued that the states' failure to mitigate climate change and reduce emissions resulted in severe impacts on their health and well-being, highlighting environmental degradation as a significant human rights issue.

In the case of Duarte Agostinho and Others v. Portugal and 32 Others, six Portuguese youths filed a complaint with the ECtHR against Portugal and 32 other countries, alleging violations of human rights due to insufficient action on climate change (Climate Change Litigation, 2024a). They contended that:

> “there had been a breach of Articles 2, 3, 8 and 14 of the Convention owing to the existing, and serious future, impacts of climate change imputable to the respondent States, and specifically those in relation to heatwaves, wildfires and smoke from wildfires, which affected their lives, well-being, mental health and the amenities of their homes. […] The applicants submitted that they were currently exposed to a risk of harm from climate change and that the risk was set to increase significantly over the course of their lifetimes and would also affect any children they might have. The applicants alleged that they had already experienced reduced energy levels, difficulty sleeping and a curtailment on their ability to spend time or exercise outdoors during recent heatwaves.” (European Court of Human Rights, 2024a)

The court ultimately found the complaint against other states inadmissible due to issues of extraterritorial jurisdiction, noting that such jurisdiction can only be accepted in specific scenarios, none of which applied in this case. Although the court recognized a certain causal relationship between emissions from a state’s territory and the adverse impacts on individuals

outside its borders, it ruled that this was insufficient to establish extraterritorial jurisdiction under current legal frameworks. Specifically, it stated that:

> "a certain causal relationship between public and private activities based on a State's territories that produce GHG emissions and the adverse impact on the rights and well-being of people residing outside its borders and thus outside the remit of that State's democratic process. Climate change is a global phenomenon, and each State bears its share of responsibility for the global challenges generated by climate change and has a role to play in finding appropriate solutions." (European Court of Human Rights, 2024a)

However, it also found that these considerations cannot be used to create a "novel ground for extraterritorial jurisdiction or as a justification for expanding on the existing ones." Neither:

> "the proposed positive obligations of States in the field of climate change could be a sufficient ground for holding that the State has jurisdiction over individuals outside its territory or otherwise outside its authority and control".

Therefore, the complaint against all States apart from Portugal was considered inadmissible. Additionally, the entire application was deemed inadmissible due to the non-exhaustion of domestic remedies.

The importance of the case lies in the recognition of climate change as a potential threat to human rights, but it was a lost opportunity to involve the ECtHR in litigating cases related to it. Indeed, "while acknowledging the significance of the climate change issue, the judgment focused on procedural matters rather than substantive arguments under the ECHR" (Hermaja, 2024). As Agostinho and Portugal (2024) note, it seems that the ECtHR was mainly concerned with preserving its own future, refusing to become a court for climate change. This type of interpretation could become a problem in future cases regarding FCMs as it strongly limits the

jurisdiction of the ECtHR in ruling on cases that are not strictly domestic, thereby limiting the possibility of applying environmental justice principles in their protection.

Still, there is a positive aspect to this restrictive approach undertaken by the ECtHR. Specifically, "it tells us how far the Court is willing to go under current circumstances, enabling litigants to shape future cases accordingly, and it provides input for ongoing discussions about the proposed additional protocol to the ECHR recognizing a human right to a healthy environment" (Heri, 2024).

In the case of Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, an association of senior women (KlimaSeniorinnen) filed a complaint against the Swiss government, arguing that their health was threatened by heatwaves exacerbated by climate change. They claimed this threatened their right to life, health, and physical integrity under Articles 2 and 8 of the ECHR (Climate Change Litigation, 2024b)

The ECtHR recognized that

> "climate change is one of the most pressing issues of our times. While the primary cause of climate change arises from the accumulation of GHG in the Earth's atmosphere, the resulting consequences for the environment, and its adverse effects on the living conditions of various human communities and individuals, are complex and multiple. The Court is also aware that the damaging effects of climate change raise an issue of intergenerational burden-sharing […] and impact most heavily on various vulnerable groups in society, who need special care and protection from the authorities." (European Court of Human Rights, 2024b)

Additionally,

> "the Court notes that, in the specific context of climate change, intergenerational burden-sharing assumes particular importance

> both in regard to the different generations of those currently living and in regard to future generations. […] It is clear that future generations are likely to bear an increasingly severe burden of the consequences of present failures and omissions to combat climate change […] and that, at the same time, they have no possibility of participating in the relevant current decision-making processes. By their commitment to the UNFCCC, the States Parties have undertaken the obligation to protect the climate system for the benefit of present and future generations of humankind […]. The intergenerational perspective underscores the risk inherent in the relevant political decision-making processes, namely that short-term interests and concerns may come to prevail over, and at the expense of, pressing needs for sustainable policy-making, rendering that risk particularly serious and adding justification for the possibility of judicial review" (European Court of Human Rights, 2024b)

Furthermore, the ECtHR recognized the connection between climate change and the rights protected by the Convention, stating,

> "There has also been a recognition that environmental degradation has created, and is capable of creating, serious and potentially irreversible adverse effects on the enjoyment of human rights. This is reflected in the scientific findings, international instruments and domestic legislation and standards, and is being recognised in domestic and international case-law" (European Court of Human Rights, 2024b)

In summary, the ECtHR found that

> "there are sufficiently reliable indications that anthropogenic climate change exists, that it poses a serious current and future threat to the enjoyment of human rights guaranteed under the Convention, that States are aware of it and capable of taking

> measures to effectively address it, that the relevant risks are projected to be lower if the rise in temperature is limited to 1.5°C above pre-industrial levels and if action is taken urgently, and that current global mitigation efforts are not sufficient to meet the latter target."

In reviewing the possible violation of Articles 2 and 8 of the ECHR, the ECtHR found that, while the applicability of Article 2 is more questionable due to the need to demonstrate a "real and imminent" risk to life, Article 8 undoubtedly applies because climate change has "adverse effects not only on individuals' health but on their well-being and quality of life." Therefore, the ECtHR decided to review the case under the scope of Article 8 alone.

After recognizing the importance of states' positive action in mitigating climate change and reviewing Switzerland's failure to comply, the ECtHR found that "failure by the State to comply with this aspect of its positive obligations would suffice for the Court to conclude that the State failed to comply with its positive obligations under Article 8 of the Convention." Specifically, the respondent state violated Article 8 of the Convention because

> "there were some critical lacunae in the Swiss authorities' process of putting in place the relevant domestic regulatory framework, including a failure by them to quantify, through a carbon budget or otherwise, national GHG emissions limitations. Furthermore, the Court has noted that, as recognised by the relevant authorities, the State had previously failed to meet its past GHG emission reduction targets […] and failed to comply with its positive obligations in the present context."

Indeed, KlimaSeniorinnen was held to be a victim of the Swiss state's omission of action, which had to pay eighty thousand euros for its violation

of Article 8.

This case is of extreme importance as it sets a precedent in recognizing a violation of Article 8 caused by an omission of positive action strong enough to mitigate climate change by states. Indeed, citizens of States Parties “could now request a review of national climate policies to ensure the protection of human rights based on the principles established by the ECtHR” (Bretscher et al. 2024). This is also crucial in the context of FCMs, as it could open the possibility of recognizing a similar violation if they are returned to their home states.

2.3. New Possibilities

It is possible to conclude that, currently, there is no specific European instrument that can adequately protect FCMs. Therefore, I will now analyse new possibilities for the European Union to create a more comprehensive normative framework.

2.3.1. A new Regulation

One possible path to enhance the protection of FCMs, and probably the most powerful one, is to adopt new regulation under article 78 of the Treaty on the Functioning of the European Union (TFEU). This article grants the EU the authority for developing

> "a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement" (European Union, 2012).

As noted by Karayiği and Kılıç (2021), for the EU to have a greater impact on national laws, it should prioritize creating new regulations over directives. Regulations offer immediate application without the delays requested by directive's implementation. Further, regulations ensure a uniform approach across Member States, strengthening the EU's ability to address challenges collectively. Finally, they ensure that rights and responsibilities are respected uniformly, as if they were instituted by national laws.

The current academic literature does not propose a specific regulation regarding the protection of FCMs. However, one could consider a proposal similar to the 'Proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum', put forth by the Commission in 2020. This which was recently accepted on May 14, 2024, as Regulation

2024/1359/EU, transposes the Temporary Protection Directive (TPD) (Scissa, 2022).

This new regulation represents a missed opportunity to explicitly state that "a situation of crisis or force majeure in the field of migration and asylum [that] arises due to circumstances beyond the control of the Union and its Member States" (Regulation 2024/1359/EU) may include people fleeing unbearable environmental damage caused by climate change.

Still, a future possibility, which may become a necessity whenever the movement of FCMs becomes unbearable for EU to deal without specific legislation, would probably be similar to the cited regulation. For example, it would

> "respect the fundamental rights of third-country nationals […] in particular the respect and protection of human dignity, prohibition of torture and inhuman or degrading treatment or punishment, respect for private and family life, the principle of the best interests of the child, the right to asylum and protection in the event of removal, expulsion or extradition" (Regulation 2024/1359/EU).

Such regulation would define climate change and FCMs in its General Provisions, clarifying its scope and applicability.

Unlike the "force majeure" regulation, this new framework should not impose temporal limits, recognizing that environmental changes forcing migration may be irreversible.

Lastly, but not least, such regulation should outline the rights FCMs have in hosting countries, aligning with human rights, and establish clear procedures for asylum and visa application.

Despite being the most significant and functional instrument for establishing a legislative framework for FCMs, the reality of creating such a regulation is discouraging due to familiar challenges encountered in forming international legal frameworks: political will. Indeed, Member State are hesitant to welcome non-EU nationals inside their border, and a

regulation focused on FCM protection may face resistance due to its potential breadth, such as lacking temporal limitations. Hence, to gain acceptance, it may require a more securitized approach that prioritizes protecting national borders rather than focusing solely on the rights of FCMs.

As noted by Karayiğit and Kılıç (2021), a fundamental shift in the EU and its Member States' approach toward climate refugees is crucial for establishing a comprehensive legal framework to address the humanitarian needs of FCMs.

2.3.2. New Pact on Migration and Asylum

The regulation for "force majeure" mentioned earlier is part of the roadmap[21] of the New "Pact on Migration and Asylum" (the New Pact), which is a comprehensive framework developed by the European Union to address various aspects of migration and asylum policy.

In this context, as Scissa (2022) notes, an opportunity to revitalise the asylum system "to provide protection against emerging new causes of forced migration, where climate change ad environmental degradation will play a critical role […] has arguably been missed". Indeed, none of the new legislative instruments have considered FCMs.

In 2022, Scissa proposed that under the Union Resettlement Framework, which "should offer the most vulnerable third-country nationals or stateless persons in need of international protection access to a durable solution in accordance with Union and national law" (Regulation 2024/1350/EU), could include as vulnerable international protection seekers "those displaced for environmental reasons and those whose vulnerability is linked to the impact of environmental factors on their

[21] For a summary of the different legislative files created within the framework of the Pact see https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum/legislative-files-nutshell_en#crisis-and-force-majeure-regulation

livelihood and wealth, as well as those who may count on family links to flee from dire environmental conditions".

However, when Scissa made that statement, the regulation had not yet been accepted. Since its acceptance on May 14, 2024, it is clear that Scissa's disenchanted view about the likelihood of adding new categories of migrants to those considered vulnerable was justified. Indeed, FCMs and climate change were not included in the vulnerable categories established by the regulation[22].

This omission is not only an operational problem, as the EU is not prepared to "deal with movements triggered by environmental forces" but it also represents an anachronistic situation, inconsistent with the international perspective on FCMs and the interpretation provided by the Ioane Teitiota case regarding "international human rights standards in the context of climate change." This case should have prompted the EU to recognize the "causal link among environmental threats, forced migration, and non-refoulement," which should have been considered in drafting new migration legislation (Scissa, 2022).

Nevertheless, there remains a possibility of adding a new legislative instrument within the framework of the New Pact due to evolving international perspectives. While the principles from the Ioane Teitiota case have not yet been incorporated at the European level, it is reasonable to expect a shift when national laws begin to implement and adopt these principles, as is already happening in Italy. As Hugues

[22] The definition of vulnerable person in the regulation comprise
"(i) women and girls at risk;
(ii) minors, including unaccompanied minors;
(iii) survivors of violence or torture, including on the basis of gender or sexual orientation;
(iv) persons with legal and/or physical protection needs, including as regards protection from refoulement;
(v) persons with medical needs, including where life-saving treatment is unavailable in the country to which they have been forcibly displaced;
(vi) persons with disabilities;
(vii) persons who lack a foreseeable alternative durable solution, in particular those in a protracted refugee situation;" (Regulation 2024/1350/EU)

(2024) states, "if Europe wants to be at the forefront of the protection of human rights, the New Pact will require further work."

2.3.3. Amending the Directives

Another option to expand the European legal framework to include the protection of FCMs involves amending the aforementioned directives to extend them. Indeed, they were drafted in a period where the recognition of climate change as a strong motif to move was not as recognized as today. Therefore, they should be revised to be “applied and interpreted in today's context of climate change” (Kolmannskog, Myrstad, 2009).

- **Qualification Directive**: In the Qualification Directive, it would be sufficient to include environmental disaster in Article 15 as one of the “protected grounds” under the concept of subsidiary protection for serious harm (Kraler et al., 2017). In this way, FCMs would be granted subsidiary protection without hoping for an extensive interpretation of the CJEU nor relying only on national implementation.

- **Temporary Protection Directive**: Even though Article 7(1) already provides the possibility to extend temporary protection to additional categories of migrants, a specification for accommodating FCMs could be made by amending Article 2(c) to include persons who flee their country for environmental factors as part of the definition of “displaced persons.” This would ensure that the directive applies directly to FCMs without relying on extensions granted by Member States. In cases of mass sudden displacement due to environmental reasons (such as natural disasters caused by climate change), this amendment would provide immediate protection. Furthermore, the duration of temporary protection should consider the conditions in the home

state, and Chapter II should be amended to add provisions extending protection if the reasons for temporary protection persist or become permanent, until another type of protection (such as asylum) can be granted.

- **Return Directive**: Future revision of the RD could explicitly grant a mechanism to postpone the removal (and so grant the non-refoulement principle) to FCMs adding environmental reasons to article 9(1). In this way FCMs would be protected by the directive and Member State should apply the non-refoulement principle not only because of the possible human rights reasons observed through this thesis, but also because mandated by the RD.

However, several problems arise with the hypothesis of amending these directives. One is the, already mentioned multiple time, problem of political will: Member States would not be favourable to extend the protection given by the directives to other categories of migrants because it would be perceived as a potential threat to their national boundaries.

Another issue relates to a more general problem with amending directives, as they should be transposed and implemented by national laws, a process already problematic with the existing texts as there is a problem with general reluctance to implement directives in the area of asylum policy. Adding new categories of protected migrants that Member States are reluctant to recognize would exacerbate these issues. Indeed, there is general reluctance to implement.

For these reasons "amending and broadening the scope of existing directives […] is not considered a general solution at the EU level for the effective legal protection of climate refugees" (Karayiği and Kılıç, 2021).

2.3.4. Adding a protocol to the ECHR

Another route that is possible to imagine opening the European framework

to the protection of FCMs is that of expanding the ECHR. In the specific, the Council of Europe Parliamentary Assembly's Committee on Migration, in its 2008 report, proposed in paragraph 121 to add a separate protocol to the ECHR "to enhancing the human rights protection mechanisms vis-à-vis the challenges of climate change and environmental degradation processes" (Council of Europe, 2008). In this protocol "the right to a safe, clean, healthy and sustainable environment" would be added, thereby guaranteeing rights stemming from environmental degradation, not recognized by article 37 of the Charter[19].

For a matter of fact, the 2008 report is notably welcoming to FCMs, especially considering the time of writing, and proposes a framework where their rights could thrive. For instance, in paragraph 24.5 invites the elaboration of national and international legislation

> "that would recognise environmentally induced migrants and their protection needs not only through the principle of non-refoulement under Articles 2 and 3 of the European Convention of Human Rights but also through subsidiary protection, e.g. granting them a status of temporary humanitarian residence or a permanent status in case of impossibility of return" (Council of Europe, 2008)

If this recommendation were acknowledged and adopted by both the ECHR and the CJEU, future cases would be more likely to recognize violations of FCMs' rights solely due the catastrophic environmental conditions in their homes. However, given the current restrictive approach of both courts, it is unrealistic to expect that, without any specific and legally binding legislative instrument, their approach would change to include FCMs in their rulings about human rights violation without a considerable high threshold.

Indeed, this potential protocol would help create a framework for the ECtHR and the CJEU to deal with future cases involving FCMs in a systematic and comprehensive way. Given the strict connection between

the ECHR and the Charter, it is reasonable to expect that a new right in the first would also be implemented by the second. This would "benefit individuals by providing a specific protection mechanism for their specific problem" as it would "be an influential and effective way of bringing explicit legal protection for climate refugees across the Contracting Parties, particularly in the EU Member States."

Moreover, by taking the lead on this issue, Europe could position itself as a global leader in addressing the challenges faced by FCMs. Given its significant role in international geopolitics, Europe's proactivity would open the path for other regions to consider FCMs and would "inspire other regional organizations and increase worldwide awareness of the issue" (Karayiğit and Kılıç, 2021).

However, the main problem for drafting any new legislative instrument about FCMs remains: there is a lack of political will among States to enlarge any possible protection for third-country nationals. Karayiği and Kılıç (2021), perhaps cynically, observe that "there is […] no political will of the States and so no concrete steps have been taken on drafting an additional protocol for the right to a healthy and safe environment ever since the suggestion of the [Parliamentary Assembly's Committee on Migration]", and this observation holds true. The potential protocol and addition of this right continue to be debated and proposed by the Committee even in recent years[23], but no actual steps have been taken to implement these recommendations.

[23] See for example https://pace.coe.int/en/news/8452/the-right-to-a-healthy-environment-pace-proposes-draft-of-a-new-protocol-to-the-european-convention-on-human-rights-

2.4. The Italian Case

With the suspension of dedicated domestic provision in Finland and Sweden[24] (the only ones until 2016), both caused by the high number of arrivals in 2015, Italy "would seem the only exception as for national migration laws granting humanitarian protection to environmental migrants" (Rosignoli, 2022).

Indeed, while Finland and Sweden began suspending their provisions, Italy embarked on the opposite process, leading to the current legislation on humanitarian protection for environmental migrants. In 2014, "for the first time in Italy, humanitarian protection was granted for environmental reasons" (Rosignoli, 2022). The case involved the applicant Rachid, his lawyer Alba Ferretti, and the Tribunal of Bologna. Ferretti secured humanitarian protection for her client, who had fled after a flood destroyed all his possessions, inundated the lands he cultivated, and killed all the animals he raised, under Legislative Decree No. 286/1998 (Rosignoli, 2022; Liberti, 2024).

The Decree, at the time, allowed for subsidiary protection under Article 5(6) due to "serious reasons of a humanitarian nature," which the court deemed sufficient to include disasters and protect the plaintiff.

2.4.1. The legislative framework

As Fornale (2020) notes, the concept of humanitarian protection was included in the legislation "to advance a preventive framework that could not identify a priori the person in need but was nevertheless available to ensure protection in case of need". Unsurprisingly, a few years later, under the right-wing Salvini's Security Decree (Decree No. 113/2018), the

[24] "In particular, Section 88a, Chapter 6 of the Finnish Aliens Act 301/2004 granted humanitarian protection if an environmental catastrophe prevented a person from returning home. In that case, a Finnish resident permit could be issued if neither asylum nor subsidiary protection were applicable. Similarly, Section 2a, Chapter 4 of the Swedish Aliens Act (2005: 716) ensured protection to a person who could not return home because of an environmental disaster" (Rosignoli, 2022)

clause was entirely replaced with: “The refusal or revocation of the residence permit may also be adopted based on international conventions or agreements, made enforceable in Italy, when the foreigner does not meet the conditions of stay applicable in one of the contracting states”” (Legislative Decree No. 286/1998). The humanitarian protection was replaced with various temporary residence permits. Between this it was introduced the permit for calamity, adding Article 20-bis(1):

> “In accordance with Article 20, when the country to which the foreigner should return is experiencing a contingent and exceptional calamity that prevents their return and staying under safe conditions, the police commissioner issues a residence permit for calamity” (Legislative Decree No. 286/1998)

One problem with this formulation is that, as noted by Scissa (2022), the wording “contingent and exceptional calamities” would include only sudden-onset disasters, while all people fleeing from slow-onset events would not be eligible under the scope of the article.

Another problem is that this residence permit for calamities could be renewed only for six months and could not be transformed in a long-term work visa, as explained in Article 20-bis(2)

> “The residence permit issued in accordance with this article has a duration of six months and is renewable for an additional six-month period if the exceptional calamity conditions specified in paragraph 1 persist. The permit is valid only within the national territory and allows for employment activities, but it cannot be converted into a work permit” (Legislative Decree No. 286/1998)

As noted by Rosignoli (2022), this provision made humanitarian protection so difficult to apply that it left “thousands of migrants into irregular status, with the recognition of humanitarian protection shifted from 25 percent of cases of protection in 2017 to 1 percent in 2019”.

Still, recognizing calamities as a reason for migrating, even if done in a

restrictive way, opened the way for all the subsequent Italian legislation and instruments that protect FCMs.

Thanks to the decree 130/2020, made into Law 173/2020, residence permit for calamities was extensively amended. Indeed, in article 1(f) the decree establishes that, in article 20-bis(2)

> "The words 'for an additional six-month period" are deleted, the word 'exceptional' is replaced with 'serious', and the words ', but it cannot be converted into a residence permit for work reasons' are deleted." (Legislative Decree 130/2020)

So, with the new wording, the residence permit for calamities can be extended without any fixed term, allowing it to be renewed as long as the conditions of environmental insecurity in the country of origin persist. Additionally, the term "exceptional," which required a stricter interpretation, was replaced with "serious," allowing for a broader interpretation "based on the degree of severity rather than on its progression over time" (Scissa, 2022).

Most importantly, the permit for calamities can now be converted into a longer-term work permit (Rosignoli, 2022)

Moreover, since the term "calamity" is not defined by the legislator, its interpretation can potentially cover people fleeing from both natural and human-caused events (Rosignoli, 2022; Scissa, 2022)

One problem is that the most recent law did not amend the previous responsibility to assess "the severity of the disaster", which is left to the police headquarter. Their discretion, combined with bureaucratic difficulties, has continuously limited the application of Law no. 173/2020 (Rosignoli, 2022). Monitoring by the "Forum per cambiare l'ordine delle cose" (2021) notes that "the legislative amendment is effectively crushed and overridden by illegitimate practices and circulars", mainly due to the discretion left to the police headquarters, which continue to apply the security decree while boycotting special protection requests, as there are

no strict guidelines from the central administration, keeping "thousands of people in bureaucratic and legal limbo".

Rosignoli (2022) makes a correct and interesting conclusion about the issue

> "although the residence permit for disasters is a remarkable form of protection to "environmental migrants," the discretion of police headquarters is vanishing affecting its effective implementation. Further, it remains unclear whether it is a "real" step forward in the Italian legislation on this matter or rather two steps back compared to the broader humanitarian protection provided by the repealed Article 5 (6) of Italian Immigration Act."

To aggravate the problems with this permit is the last update done in 2023 within the right-wing Meloni government, which reverted the text to the one without the amendments, the one of the Security Decree. Adding up all the problems, the Permit for Calamity remains a difficult instrument to apply to FCMs without progressive jurisprudence.

2.4.2. The jurisprudence

As Scissa (2022) notes, it is not only the legislation in Italy that provides a protection that is, for nowadays, a unicum in the European context, but it is also thanks to the judiciary that "has supported an evolutionary reading of national asylum provisions" that Italy has become, with all its limitation, an example of good practices.

As a matter of fact, the first Italian action to protect people unable to return home due to environmental reasons occurred well before the modification of legislation and the introduction of the residence permit for calamities. In 2008, the Ministry of the Interior issued Circular 400/C/2008/128/P/1.281 to temporarily invoke the non-refoulement principle for Bangladeshi citizens, whose return home posed life-threatening risks following a violent cyclone in their country:

> “Following the cyclone that struck Bangladesh, numerous issues concerning the citizens of that country residing in the national territory were raised during a recent meeting. In this regard, it should first be considered that the situation in the affected country makes repatriation inadvisable, thus the execution of expulsion orders for Bangladeshi citizens should be temporarily suspended.” (Circular 400/C/2008/128/P/1.281)

The most progressive interpretations of domestic norms have been more recent, led by the Supreme Court of Cassation, which has “promoted a human rights-based […] interpretation […] in light of the effects of climate change and environmental degradation” (Scissa, 2022).

In Case No. 2563 involving a Bangladeshi citizen whose home was devastated by floods in 2012 and 2017, the Court of Cassation recognized this as sufficient grounds to grant humanitarian protection. Paragraph 5.1 of the decision acknowledged the potential violation of human rights, emphasizing that such circumstances could jeopardize

> “applicant's vulnerability if accompanied by adequate allegations and evidence regarding the possible violation of the applicant’s primary rights, which could expose the applicant to the risk of living conditions that do not respect the minimum core of fundamental rights that constitute human dignity” (Court of Cassation, 2020)

Paragraph 5.4 further elaborated on the necessity of case-by-case examination, stressing that “serious reasons” are not pre-defined:

> “the right to humanitarian protection is in any case linked to the existence of "serious reasons", not typified or predetermined, not even by way of example, by the legislator, so they constitute an open catalogue, all united by the purpose of protecting situations of individual vulnerability, either current or predicted upon return: that is, the verification of the existence of a personal condition of

> vulnerability cannot be omitted, thus requiring an individual evaluation, case by case, of the private and family life of the applicant, compared to the personal situation he experienced before departure and to which he would be exposed upon return: serious humanitarian reasons can then positively be identified if, as a result of this comparative judgment, there is not only an actual and insurmountable disparity between the two life contexts in the enjoyment of fundamental rights, which are essential prerequisites for a dignified life, but also specific correlations between this disparity and the applicant's personal story" " (Court of Cassation, 2020)

Moreover, paragraphs 5.5 and 5.6 underscored that the residence permit for calamities should undergo an evolutionary interpretation in light of humanitarian protection, consistent with principles affirmed by the Court. This interpretation and evolutionary approach demonstrate that environmental factors can indeed "be the main cause of migration and of living conditions that are precarious that they cannot satisfy fundamental rights and ensure respect for human dignity". For this reason, the CJEU should consider the insight from this case under the Charter and the human rights protected by it for future jurisprudence (Scissa, 2022).

Another interesting case (No. 5022) of the Court of Cassation involved an applicant from Niger Delta in 2021, where living conditions became unbearable due to "exploitation of natural and oil resources by numerous companies and conflict among paramilitary groups fighting for control over these resources, as well as sabotages that led to oil spills". The applicant appealed after the Tribunal of Ancona which denied him "subsidiary and humanitarian protection" (Scissa, 2022).

The Court promptly criticized the lower court for failing to consider the context of environmental degradation and widespread insecurity in its decision. Interestingly, the Court invoked the Ioane Teitiota case, noting

that “the issue of environmental and climate disaster has been addressed at the international level by the United Nations Committee in the decision on the appeal brought by Ioane Teitiota” (Court of Cassation, 2021). The judgment elaborated on the UN Committee's emphasis on the general principle of non-refoulement:

> “the UN Committee emphasized that the general principle of non-refoulement, which prohibits the return of an asylum seeker to a territory where there are substantial risks of irreparable harm to their safety or that of their family, applies to all dangerous conditions. This is because the individual right to life encompasses the right to a dignified existence and freedom from any acts or omissions that could cause unnatural or premature death.” (Court of Cassation, 2021)

This ruling, the Court explained, obliges States to “ensure that individuals live in conditions that allow for the full realization of the right to life in its broadest sense, regardless of the current existence of a survival threat”.

The rationale behind the Court’s decision in this case is evidently explained:

> “if, as in this case, the court identifies a situation in a specific area that constitutes an environmental disaster or severe compromise of natural resources accompanied by the exclusion of entire population segments from their enjoyment, the evaluation of the dangerous conditions existing in the applicant's country of origin, for the purpose of granting humanitarian protection, must specifically consider the peculiar risk to the right to life and dignified existence resulting from environmental degradation, climate change, or unsustainable development of the area.” (Court of Cassation, 2021)

Finally, it is also important to notice that the Court explained that a threat to human rights can arise solely from socio-environmental conditions

attributable to human actions and that, more generally

> "The danger assessment […] should not be conducted solely concerning the extreme case of armed conflict but, more generally, regarding the existence of a condition that can, in practice, reduce the fundamental rights to life, liberty, and self-determination of the individual" (Court of Cassation, 2021)

This interpretation is revolutionary. Importantly, citing the Teitiota case as a guiding principle could encourage national and international courts to apply the Committee's international principles in their rulings. Indeed, "domestic courts have the potential to anticipate normative formation by increasingly engaging in interpretative contributions to the constantly evolving reality" (Fornale, 2020).

Both cases pave the way for a future evolutionary approach in rulings regarding environmentally displaced persons not only at the Italian level but, hopefully, also at the European level. It is crucial that the CJEU incorporates the principles articulated clearly in this case into its future rulings, recognizing the role of climate change as a migration factor. When environmental conditions caused by climate change become unbearable, the non-refoulement principle should apply, even in cases not directly linked to violence, conflicts, or directly caused by specific human groups. Under this interpretation, "subsidiary protection might be offered if the damage caused to migrants by environmental conditions could place their life at serious risk" (Scissa, 2022). There exists a link between climate change and fundamental rights, and individuals whose fundamental rights are endangered should always be protected under international law.

2.5. Final remarks

Concluding this chapter and moving towards the conclusion of the thesis, it is clear that the European Union's approach to the protection of Forced Climate Migrants (FCMs) remains ambiguous. Currently, there is no

specific legal instrument that effectively addresses their protection, and the prospects for future development are equally uncertain. A strong political will is essential for implementing any of the considered options, yet this is challenging in an era where nationalism and extreme right-wing parties are on the rise across Europe.

Although FCMs have been recognized as an emerging issue by various European institutions, "it is accurate to say that climate change-induced migration and climate refugees have been generally forgotten on the EU agenda with the consideration that climate change is not yet a legal crisis in the EU" (Karayiğı and Kılıç, 2021). Ignoring this issue corresponds to a lack of proactive response to a problem that is both real and of significant international concern. This lack of attention will likely result in reactive and emergency responses when faced with a surge of migrants moving specifically due to climate change.

As noted by Karayiğı and Kılıç (2021), the EU should place itself at the forefront of international cooperation and evolve its legislative and political frameworks to acknowledge the issue of FCMs, thereby protecting their human rights. As one of the most powerful actors on the international stage, the EU has the potential to become an inspirational example for others. This can primarily be achieved through two key paths: introducing new regulations or amending the European Convention on Human Rights and, consequently, the EU Charter of Fundamental Rights. These measures would provide robust instruments to influence the jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union when addressing FCMs. However, this approach also faces the significant hurdle of political will.

Given the limited insights provided by European courts' jurisprudence and legislation on the protection of FCMs, it is essential to examine national contexts. This chapter has focused on the Italian situation because it stands out as a unique example within Europe. Italy's approach to protecting

FCMs is not only due to specific legislative provisions but also thanks to the progressive jurisprudence of the Court of Cassation. The Italian court has demonstrated that interpreting norms in an evolutionary manner can result in "the full respect and implementation of human rights standards, in compliance with the interpretation given in Teitiota" and within the international framework, which is not an obvious stance for a national court to take. Furthermore, the Italian court has shown that a high threshold is not necessary to determine a potential violation of human rights due to environmental conditions, offering a "unique perspective where environmental threats are considered as valid grounds for protection and as a restriction on removal to environmentally unsafe countries" (Scissa, 2022).

In summary, while the EU's current stance on FCMs is fraught with challenges, Italy's example provides a potential blueprint for broader application. It is imperative that the EU and its member states adopt a more proactive and comprehensive approach to protect the human rights of those displaced by climate change, setting a precedent for global standards.

3. CONCLUSIONS

In conclusion, this thesis has deeply explored the complex and increasingly urgent issue of Forced Climate Migrants (FCMs), highlighting significant legal gaps at both international and European levels. The research underscores the growing reality of climate-induced displacement and the profound inadequacies of existing legal frameworks in offering adequate protection for those affected.

The introduction of the thesis began by examining the connection between climate change and human mobility. It detailed how environmental changes, such as rising sea levels, increased frequency of extreme weather events, and gradual ecosystem degradation, are compelling individuals and communities to migrate. For example, Small Island Developing States (SIDS) are particularly vulnerable to rising sea levels, with entire communities at risk of losing their homes and livelihoods. This initial section established the undeniable link between climate change and displacement, setting the stage for a critical analysis of the legal responses to this phenomenon.

The following part of the thesis critically analysed the current international legal framework, revealing its limitations in addressing the unique challenges faced by FCMs. It was found that existing international agreements and conventions, such as the 1951 Refugee Convention, do not explicitly recognize or provide protection for individuals displaced by environmental factors. This gap leaves FCMs in a precarious legal position, without the same rights and protections afforded to traditional refugees fleeing persecution or conflict. Finally, in this first chapter the case of Ioane Teitiota was analysed, underlining its importance for the international legal framework but also understanding its limitation and problems. The UN Human Rights Committee's decision in Teitiota's case, while acknowledging the potential for future climate-related asylum

claims, still set a high threshold for proving imminent danger, illustrating the current inadequacies of international legal protections. The analysis of other international frameworks, such as the Global Compact for Safe, Orderly and Regular Migration, the UNFCCC and the Nansen Initiative, further highlighted the piecemeal and often non-binding nature of existing measures.

In the second chapter, a detailed examination of the European framework was carried on. This analysis similarly exposed a lack of comprehensive protection mechanisms. While there have been some legislative advancements at the national level, as demonstrated by Italy, the overall approach within the European Union remains fragmented and insufficient. Italy's Legislative Decree No. 286/1998, which provides for temporary protection in cases of natural disasters, was highlighted as a positive yet limited step, while Italian jurisprudence showed a strong evolutionary approach. There are currently no legislative instruments within the EU that address the needs of those displaced by climate change, reflecting a broader policy gap. For example, the Qualification, Temporary Protection and Return Directives, do not specifically address climate-induced displacement. This fragmentation results in inconsistent protection and assistance for FCMs across different member states, highlighting the urgent need for a coordinated and comprehensive European policy on climate-induced displacement.

The findings of this research clearly show that the existing framework for protecting FCMs is unclear and inadequate. While some international bodies have begun to recognize climate-induced migration as a critical issue, their efforts have not yet culminated in a robust, clear legal framework.

The jurisprudence, especially the Ioane Teitiota case, has shown that criteria such as the imminence of harm for protection and the high

threshold needed to demonstrate a significant risk remain significant hurdles, particularly for those displaced by slow-onset climate events, such as desertification and sea-level rise. Other cases analysed, such as the decisions of the European Court of Human Rights (ECtHR) on environmental degradation and human rights, further illustrate the challenges in applying existing legal principles to the context of climate-induced displacement.

Given these findings, it is evident that there is an urgent necessity to develop better protection mechanisms for FCMs. Future legal interpretations and legislative measures must expand beyond individual cases to address broader community impacts. Adapting existing refugee, human rights and environmental justice frameworks to the unique challenges posed by climate change is crucial. Integrating human rights principles with environmental considerations can provide a more robust protective framework for FCMs. For instance, the incorporation of environmental displacement clauses in human rights treaties, or the development of new international agreements specifically addressing climate-induced migration, could significantly enhance the protection available to FCMs.

Finally, we must remember one fundamental truth: we are all human, and the protection of one another is a shared responsibility. Climate change is not an isolated problem affecting only developing countries; it has the potential to make any of us Forced Climate Migrants. The increasing frequency and severity of climate events means that climate-induced displacement could affect populations globally, including those in developed nations. This shared vulnerability underscores the importance of developing a universally applicable and humane legal framework for FCMs.

In light of this, it is imperative that the international community adopts a more inclusive and comprehensive approach to protecting FCMs. By acknowledging the multifaceted nature of climate-induced migration and adapting existing legal instruments accordingly, we can better safeguard the rights and dignity of those displaced by climate change. Recognizing climate change as a factor in human displacement must be at the forefront of both national and international agendas to ensure a sustainable and humane response to this growing crisis. The path forward requires collective action and a rethinking of our legal and moral obligations to protect all individuals affected by the profound impacts of climate change.

Ultimately, this thesis calls for a paradigm shift in how we understand and respond to the displacement caused by climate change. This involves not only legal reforms but also a broader societal recognition of our interconnectedness and shared responsibility to support and protect each other in the face of global challenges. The international community must come together to create a resilient and equitable framework that anticipates and addresses the needs of FCMs, ensuring that no one is left behind as we navigate the uncertain future shaped by climate change.

As Luca Di Sciullo, president of IDOS, rightly put it:

“Climate injustice and social injustice are intertwined, and migration becomes the only adaptation strategy for those who have no other alternative but to flee from poverty in all its forms. Avoiding conflicts is not enough to resolve the issue of forced migrations; it is also necessary to learn to coexist more sustainably with our planet, overturning the current development model and concretely considering the right to migrate.” (Borsci, 2022).

By addressing these issues comprehensively, we can move towards a future where the rights and dignity of all individuals, regardless of the causes of their displacement, are upheld and protected.

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