



HELSINGIN YLIOPISTO

Confronting Environmental Displacement: Exploring the Status and Protection of Climate Refugees Under International Law

Faculty of Law
Master's thesis

Author:
Inkeri Koski

Supervisor:
Professor Walter Rech

30.7.2024
Helsinki

Faculty: Faculty of Law

Programme: Law

Field of study: International Law

Author: Inkeri Koski

Name of the work: Confronting Environmental Displacement: Exploring the Status and Protection of Climate Refugees Under International Law

Genre of the work: Master thesis

Month 7/2024

Pages: VI + 76

Key words: International law, environmental displacement, refugee law, human rights law, environmental law, climate change

Supervisor or supervisors: Walter Rech

Where deposited: The University of Helsinki Library

Abstract: Climate change and its adverse effects are a global threat. Reportedly significant masses of people are forcibly displaced from their home areas due to the adverse effects of climate change. Droughts and sea level rise among other slow- and sudden-onset environmental events have born a new category of migrating persons, whose status under international law has remained unsure. This thesis focuses on studying the status and protection of climate refugees who the thesis defines as persons who are forcibly displaced due to being affected by the adverse effects of climate change and who migrate transnationally.

This thesis addresses climate refugees from a legal perspective by discovering the applicability of international refugee law, human rights law, and environmental law. Together with an analysis of scholarly literature, resolutions from international organizations, and case studies, the thesis seeks to present its reader with a comprehensive analysis of the current possibilities climate refugees have under international law to be recognized and protected.

The method of the thesis is a doctrinal approach. The research begins with an introduction to the concept of environmental migration and the separate concept of climate refugees, which is followed by separate chapters studying international refugee law, human rights law, and environmental law. Each theme chapter evaluates how the relevant international legal instruments could be used to confront the emerging issue of climate change-related displacement. Finally, the conclusions summarize the findings.

The research of the thesis concludes that the current international refugee law regime is not well-suited to address the displacement of climate refugees, as it strictly applies only to cases covered by the 1951 Refugee Convention. Since climate-related threats are not introduced in the Convention, it is suggested to apply international human rights law and principles of state responsibility together with the responsibility clauses from international environmental law to be applied to seek protection for climate refugees. Despite climate refugees lack a unified legal definition and thus are not granted legal status as climate refugees under international law, it is argued that protection can still be pursued through human rights law.

Tiedekunta: Oikeustieteellinen

Koulutusohjelma: Oikeustiede

Opintosuunta: Kansainvälinen oikeus

Tekijä: Inkeri Koski

Työn nimi: Ilmastosyistä johtuvan pakkomuuton kohtaaminen: Ilmastopakolaisten aseman ja suojelun tutkiminen kansainvälisessä oikeudessa

Työn laji: Maisterintutkielma

Kuukausi ja vuosi: 7/2024

Sivumäärä: VI + 76

Avainsanat: Kansainvälinen oikeus, ilmastosyistä johtuva pakkomuutto, pakolaisoikeus, ihmisoikeus, ympäristöoikeus, ilmastonmuutos

Ohjaaja tai ohjaajat: Walter Rech

Säilytyspaikka: Helsingin yliopiston kirjasto

Tiivistelmä: Ilmastonmuutos ja sen vakavat haitalliset vaikutukset ovat maailmanlaajuinen uhka. Ilmastonmuutoksen vakavien vaikutusten vuoksi huomattavat joukot ihmisiä ovat joutuneet pakkomuuttamaan pois kotiseuduiltaan. Kuivuus ja merenpinnan nousu muiden hitaasti sekä äkillisesti syntyvien ympäristötapahtumien joukossa ovat synnyttäneet uuden siirtolaisryhmän, jonka asema kansainvälisessä oikeudessa on jäänyt epävarmaksi. Tässä tutkielmassa keskitytään tutkimaan ilmastopakolaisten asemaa ja suojelua. Ilmastopakolaiset määritellään tutkielmassa henkilöiksi, jotka ovat joutuneet pakkosiirtolaisiksi ilmastonmuutoksen vakavien vaikutusten vuoksi ja muuttavat kansainvälisesti.

Tutkielmassa käsitellään ilmastopakolaisia oikeudellisesta näkökulmasta selvittämällä kansainvälisen pakolaislainsäädännön, ihmisoikeuslainsäädännön ja ympäristölainsäädännön sovellettavuutta. Yhdessä tieteellisen kirjallisuuden, kansainvälisten järjestöjen päätöslausumien ja oikeudellisten tapausten analyysin kanssa tutkielma pyrkii esittämään lukijalleen kattavan analyysin nykyisistä mahdollisuuksista, joita ilmastopakolaisilla on kansainvälisen oikeuden nojalla tulla tunnustetuiksi ja saada suojelua.

Tutkielman metodi on lainopillinen lähestymistapa. Tutkimus alkaa johdannolla ympäristösiirtolaisuuden aiheeseen sekä siitä eroteltavaan ilmastopakolaisuuden konseptiin, jonka jälkeen käsitellään erillisissä luvuissa kansainvälistä pakolaisoikeutta, ihmisoikeuksia sekä ympäristöoikeutta. Kussakin teemaluvussa arvioidaan, miten asiaankuuluvia kansainvälisoikeudellisia välineitä voitaisiin käyttää ilmastonmuutokseen liittyvästä pakkomuutosta aiheutuvan ongelman kohtaamiseen. Lopuksi johtopäätöksissä esitetään yhteenveto tutkimustuloksista.

Tutkielman tutkimuksessa päädytään siihen, että nykyinen kansainvälinen pakolaisoikeuden järjestelmä soveltuu heikosti ilmastopakolaisten pakkomuuttoon, koska sitä sovelletaan tiukasti vain vuoden 1951 pakolaissopimuksen soveltamisalaan kuuluviin tapauksiin. Ilmatoon liittyviä uhkia ei ole sisällytetty pakolaissopimukseen, jonka vuoksi tutkielmassa ehdotetaan, että ilmastopakolaisten suojeluun sovellettaisiin kansainvälistä ihmisoikeuslainsäädäntöä ja valtion vastuuseen liittyviä periaatteita yhdessä kansainvälisen oikeuden vastuulausekkeiden kanssa. Vaikka ilmastopakolaisilla ei ole yhtenäistä oikeudellista määritelmää eikä heille siten myönnetä kansainvälisen oikeuden alla asemaa ilmastopakolaisina, tutkielmassa esitetään, että ilmastopakolaisten suojelua voidaan silti tavoitella ihmisoikeuslainsäädännön avulla.

Table of Content

List of Abbreviations	VI
1 Introduction	1
1.1 Purpose of the Study	1
1.2 Methodology	2
1.3 Sources	3
1.4 Structure	4
1.5 Limitations	4
2 Who Are Climate Refugees	6
2.1 Climate Crisis and Forced Migration	7
2.1.1 Fight or Flight – Responses to Climate Change	7
2.1.2 Multicausality of the Decision to Move	9
2.2 Different Categories of Climate-Induced Migration	11
2.3 Defining a Climate Refugee	13
2.4 Internally Displaced Persons	16
2.5 Why is Defining Climate Refugees Important?	18
2.6 Chapter Summary	19
3 International Refugee Law and Climate Refugees	21
3.1 Introduction to International Refugee Law – The Classically Understood Refugee Protection Regime	21
3.1.1 The Definition of a Refugee	22
3.1.2 The Well-Founded Fear of Persecution	23
3.2 Can the Nature ‘Persecute’? Applicability of the 1951 Convention on Climate Refugees	24
3.2.1 Arguments Against the Applicability	25
3.2.2 Arguments Supporting the Applicability	26
3.3 The Political Debate on Refugees	28
3.4 Chapter Summary	30
4 Human Rights Law and Climate Refugees	32
4.1 Human Rights and Forced Climate-Related Migration	32
4.1.1 State Responsibility to Protect Human Rights	34
4.1.2 Extraterritorial Applicability of International Human Rights and the Principle of Non-Refoulement	34
4.1.3 The Right to a Healthy Environment	36
4.1.4 Temporary Protection	38
4.2 Case Law	39
4.2.1 Teitiota v. New Zealand	39
4.2.2 Torres Islanders v. Australia	43
4.2.3 European States Shedding Light to Alternative Forms of Protection	44
4.3 Chapter Summary	46

5	Environmental Law and Climate-Related Forced Displacement	48
5.1	Climate Refugees and Environmental Law	48
5.2	State Responsibility for the Effects of Climate Change	51
5.2.1	The Rich and the Poor Paradox	53
5.2.2	The Question of Morality	55
5.3	Possibilities for Climate Refugees under Environmental Law	57
5.3.1	The Nansen Initiative and the Platform on Disaster Displacement	57
5.3.2	Responsibility Claims	59
5.4	Chapter Summary	60
6	Conclusions	62
	References	67

List of Abbreviations

CBDR	Principle of Common but Differentiated Responsibilities
CCPR	United Nations Human Rights Committee
COP	Conference of Parties
EU	European Union
EMN	European Migration Network
IDP	Internally Displaced Person
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
IOM	International Organization on Migration
PDD	Platform on Disaster Displacement
NGO	Non-governmental Organization
UN	United Nations
UNHCR	United Nations Agency, Office of the High Commissioner for Refugees
UNCAT	United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNFCCC	United Nations Framework Convention on Climate Change
UNEP	United Nations Environmental Programme
UNHRC	United Nations Human Rights Council
UNHCR	United Nations High Commissioner for Refugees
WIM	Warsaw International Mechanism

1 Introduction

1.1 Purpose of the Study

“Rising seas are sinking futures. Sea-level rise is not only a threat in itself. It is a threat-multiplier. For the hundreds of millions of people living in small island developing states and other low-lying coastal areas around the world, sea-level rise is a torrent of trouble. Rising seas threaten lives, and jeopardize access to water, food, and healthcare.”¹

With these words, the UN Secretary-General, António Guterres, started his speech at the Security Council Debate on Sea Level Rise, in February 2023. The sinking future is the reality of societies living in low-lying small island states. At the same time, other areas are threatened by desertification, extreme weather events, and other environmental changes caused by global warming.

Climate change has become one of the most talked about topics around the world.² Images of masses of people moving from the Global South to the Global North have been picturized. World leaders are trying to tackle the effects of climate change through new policies and international cooperation. Yet, the results of the warming globe can already be felt and are unlikely to be stopped. As the rising temperature of the atmosphere causes droughts, cyclones, and rising sea levels, the areas most vulnerable to these changes are already becoming unsuitable living as we speak. The adverse effects of climate change leave the residing communities in front of a difficult question – whether to stay or to leave. In an increasing number of these cases, there is no other possibility for people to flee their homes in the hope of a better, or any, future. This causes mass environmental displacement.

Despite the wide scope and severeness of climate change-induced forced migration, the international community lacks robust policies to handle the issue and to provide protection mechanisms for the displaced. In the discussion of climate-related displacement, the question of protecting the fundamental rights of the displaced

¹ See the whole speech which was given on the 14th February 2023 on <https://www.un.org/sg/en/content/sg/statement/2023-02-14/secretary-generals-remarks-the-security-council-debate-sea-level-rise-implications-for-international-peace-and-security>. Accessed 4th December 2023.

² Here, the notion *climate change* is defined as the change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods, as defined in the United Nations Framework Convention on Climate Change from 1992, Article 1.2.

should be recalled. Currently, the international refugee law leaves these so-called climate refugees undetermined, and protection for this group of people of climate refugees can be sought from varying sources of international law. In legal literature and the jurisprudence of global institutions, this gap in international law has partly been fulfilled, and some alternative ways to recognize climate refugees in a larger category of environmentally displaced persons could be possible.

This thesis navigates this major gap in international law concerning climate refugees. It aims to comprehensively examine how current legislation can and could be implemented to cover climate refugees. The research question discovers what, if any, is the status of climate refugees in international law and how the rights of climate refugees could be protected. The thesis analyses relevant international legal frameworks in refugee, human rights, and international environmental law to address this question and provides a broad definition for climate refugees. In this research, climate refugees are defined as those persons who are forcibly displaced due to being affected by the adverse effects of climate change and who migrate transnationally

While there is rather plentiful literature concerning environmental displacement, the field has been missing a study that would take into account all three legal frameworks of refugee law, human rights law, and environmental law. This thesis fills this gap. As the field of climate refugees remains largely based on legal literature and policy statements, understanding the scope of the issue requires seeing the big picture and connecting the dots between different legal fields. In addition, the development in the field of climate change can be rapid, and the thesis at hand can provide a timely look at what currently are the possibilities for climate refugees under international law.

1.2 Methodology

The methodology of the thesis is a doctrinal approach. Traditionally doctrinal research involves analysis of often appellate court decisions and legislation.³ The doctrinal analysis attempts to realize the connection between juridical decisions and written law. Nowadays doctrinal research is also seen to establish arguments for the

³ Mccrudden 2006, p. 634

“best” solution to a problem, the most fitting implementation of the law.⁴ The doctrinal method is a valuable method of research due to its ability to discover and clarify the content of law whilst also being able to be critical.⁵ The reason for using a doctrinal approach in this thesis is that while this thesis aims to give a comprehensive analysis of current international legal norms and their suitability to the situation of climate refugees, such analysis can be pursued by a doctrinal method. As climate refugees are not explicitly defined in legal documents, the importance of exploring their possible status and protection in the existing legal frameworks has been highlighted. Therefore, this research comprehensively examines a wide range of legislation, international agreements, international policies, legal literature and relevant case law. By the doctrinal approach the letter of law, as codified in the sources of this thesis, is examined. Furthermore, examining the interpretation of the existing norms together with analysis of surrounding guidelines, case law, and topical literature intends to discover the interplay of the sources and knowledge of the current interpretation of the law. By doctrinal research method, the thesis also aims to acknowledge possible variations of the understanding and interpretation of relevant norms and to examine the existing interpretations critically.

The thesis will provide insight into the current discussion in the legal literature of climate refugees and the themes surrounding it. For the past two decades, many academic texts have been written pondering the situation and aiming to provide alternative solutions to the issue. As a part of the research, these will be included, and the suggestions will be presented. The relevant articles and books vary from concerning merely climate refugees to also covering migration laws and policies, internal displacement, and social and political aspects of international protection of refugees.

1.3 Sources

The analysis of the thesis comprises three main themes. First, the examination is based on the international refugee law regime, focusing largely on the United Nations Convention Relating to the Status of Refugees of 1951 and its ability to expand to cover climate refugees. Secondly, the thesis moves on to analyze international human rights law through the International Covenant on Civil and Political Rights, relevant

⁴ *Ibid.*

⁵ Egan, 2017, p. 17

case law, and the UN Resolution on the right to a clean, healthy, and sustainable environment. The third theme examines the framework of international environmental law concerning the UN Framework Convention on Climate Change, the Kyoto Protocol, the Paris Agreement, and a case study of state responsibility for climate change effects.

Whereas climate refugees are not defined in legal instruments, the thesis includes a wide evaluation of legal literature on environmental migration and climate change-induced displacement. Moreover, as an international law research, evaluating policy documents for instance from the United Nations is noteworthy.

1.4 Structure

The thesis consists of six chapters. After the present introductory chapter, it discusses the concept of climate refugees and then continues to three theme chapters which each examine climate refugees in separate legal regimes; international refugee law, human rights law, and finally environmental law, before concluding.

The structure is organized so that the reader can logically follow through the thematic chapters and understand each subject's relevance in climate refugee status and protection determination. Each chapter will summarize the findings to assemble what the chapter has analyzed. The Conclusions Chapter will mirror the research conclusions and provide questions for further study.

1.5 Limitations

While the thesis aims to provide an all-including outlook on international law about climate change-related displacement in the case of climate refugees, for the paper to be a master's thesis and respecting the word limitations, certain aspects have not been possible to integrate to the research.

For instance, features from the European Union legislation have mostly been omitted from the research. The way European Union legislation could provide status or protection to climate refugees is thus not analyzed in this research, and the study focuses on more broadly international law perspectives. However, exploring EU law about climate refugees could provide models for the international approach to the issue and a model of a regional approach to the problem.

Furthermore, the study is limited to international cases of forced displacement due to climate change, and thus the issue of internally displaced persons (IDPs) is only briefly covered. To study the concept of climate refugees, IDPs are introduced and the situation between internal and international displacement compared. Due to the emerging lack of policies concerning climate refugees in international law, the thesis navigates only the gaps in climate refugee protection and focuses on their fulfillment.

2 Who Are Climate Refugees

The effects of global warming, such as rising sea levels, droughts, increased air pollution, and extreme weather events are affecting the livelihoods of many areas, making it impossible for people to live a dignified life there.⁶ Human activities such as burning fossil fuels, deforestation, and industrial activities have accelerated climate change to the extent that climate change is considered one of the biggest threats to human existence.⁷ According to the United Nations High Commissioner for Refugees (UNHCR), climate-related disasters cause more than half of the new displacements reported in 2022, and more than half of refugees and internally displaced persons (IDPs) live in countries that belong to countries belonging to the most vulnerable for the effects of climate change.⁸

The vulnerability to climate change of certain communities and groups of people increases their risk of being forcibly displaced from their home areas. There has not been recognized only one category of persons fleeing their home countries in the face of climate change's adverse effects in the discussion of climate change-related displacement. There have been identified groups of people who can be categorized for instance as environmental migrants⁹, internally displaced persons¹⁰, and the so-called climate refugees. For the research, the focus will be on climate refugees who are persons forcibly and transnationally displaced from their home states due to the adverse effects of climate change. Yet, to understand the different levels of climate change's impacts on the movement of people, and thereby how climate refugees are located in this bigger picture of environmental migration and displacement, the different categories of climate-induced migration are presented and kept along in the discussion. Discovering the status of climate refugees in international law does not exist in a legal vacuum, and therefore it is relevant to seek possible policy examples from the frameworks that already exist.

⁶ UN General Assembly 2019, p. 5

⁷ *Ibid.*

⁸ UNHCR, 'Climate change and displacement: the myths and the facts', 15th November 2023. Accessed from <https://www.unhcr.org/news/stories/climate-change-and-displacement-myths-and-facts>. Date used 20th May 2024.

⁹ See e.g. Picchi 2016, p. 578

¹⁰ Internal displacement refers to persons who have to forcibly move within the borders of their country. See e.g. Internal Displacement Monitoring Centre and Norwegian Refugee Council, Global Report on International Displacement 2023: Internal displacement and food security.

2.1 Climate Crisis and Forced Migration

People migrate for multiple reasons, whether it is for work, education, family ties, or perhaps in the hope of a better quality of life. For some, the decision to migrate stems from changes in their living environment caused by climate change.¹¹ The role of climate change impacts in migration trends has increased, and some have even referred to the movement as “*climigration*”.¹² While environmental migration is widely recognized in the international community, the cases of forced transboundary migration seem to lack a deep understanding.

The core reason for the decision to move can vary, even when the effects of climate change play a part in it. The decision to migrate derives from numerous reasons varying even from the socio-cultural-political-economic environment of the community, how the persons of the community experience the impacts of climate change, individual and community attitudes towards migration overall, and the type of the climate outcome that is in question.¹³

2.1.1 Fight or Flight – Responses to Climate Change

In practice, the three major climate change impacts that have been stated to have the greatest effect in human movement are sea level rise, increasing severe weather events, and drought and deforestation.¹⁴ Furthermore, the weather events can be divided into slow-onset weather events that develop gradually, such as droughts and sea level rise, and sudden-onset weather events that develop unexpectedly, such as hurricanes and flash floods.¹⁵ The way a migrant can adapt to the changes in the living environment differs depending on the type of weather event.

¹¹ In this thesis, the term *climate change* refers commonly to the explanation by the World Bank’s Climate Change Knowledge Portal, according to which “The observed changes over the 20th century include increases in global air and ocean temperature, rising global sea levels, long-term sustained widespread reduction of snow and ice cover, and changes in atmospheric and ocean circulation as well as regional weather patterns, which influence seasonal rainfall conditions. These changes are caused by extra heat in the climate system due to the addition of greenhouse gases to the atmosphere. These additional greenhouse gases are primarily input by human activities such as the burning of fossil fuels (coal, oil, and natural gas), deforestation, agriculture, and land-use changes. These activities increase the amount of ‘heat-trapping’ greenhouse gases in the atmosphere.” See more at <https://climateknowledgeportal.worldbank.org/overview>. Date used 12th March 2024.

¹² Bronen 2008; Ketola 2015; Matthews – Potts 2017; Bronen 2022

¹³ Hodgkinson et al. 2010, p. 72

¹⁴ Williams 2008, p. 506

¹⁵ Kibreab 2017, p. 358-359

The capability of the communities in areas affected by weather events, whether are they sudden or slow, is largely impacted by the ability of the community altogether and its people to cope in changing situations. It has been found that as an example sudden-onset weather events cause a significant amount of costs to the affected people, and thereby leave them only marginal room for individual adaptation¹⁶, because not all have the means to cover adaptation expenses. This is especially evident in the developing states.

The effects of climate change can have a direct or indirect impact on a person's decision to migrate. The capability and ability of a person, a family, or a whole community to cope with the situation of a changing living environment affects the situation critically.¹⁷ Not all can migrate at all. In these situations, one reason for not leaving despite significant difficulties in sustaining oneself in the home area, being involuntarily immobile, can be the lack of human or financial capital.¹⁸ As an example, people with lower levels of education and income are less unlikely to move in these situations.¹⁹

Sometimes people choose not to move even though they face difficulties due to environmental changes. Behind the reason to stay despite slow-onset weather events, and in some cases also sudden-onset weather events, can for instance be the relationship a community has to its land. In some cases, the cultural ties to the land can be so strong that migration is not a preferred choice, even in the face of the most difficult situations. For instance, in the small island states in the Pacific, which face possible sinking in the coming decades, some communities have a spiritual relationship with their land.²⁰ The connection to the land has been built for hundreds or thousands of years, and in some cases, the people do not want to leave their ancestors, who are buried in the ground. Thus, it is valid to keep some cultural sensitivity in mind when assessing the situation of climate refugees, especially when the discussion concerns the Pacific Islanders or other communities that have a tight relationship with the land.

¹⁶ Koubi et al. 2022, p. 372

¹⁷ Prokkola et al. 2021, p. 38

¹⁸ *Ibid.*, p. 374, 385

¹⁹ *Ibid.*, p. 385

²⁰ World Bank Blogs 2023

2.1.2 Multicausality of the Decision to Move

According to Antonio Guterres, the Secretary General of the UN and the former UN High Commissioner for Refugees, it is difficult to categorize displaced people because of the combined impacts of conflict, the environment, and economic pressures.²¹ The effects of climate change are interconnected and chained, meaning that its impact on an area is not only limited to immediate effects such as worsening droughts. It also includes later consequences. For example, a prolonged drought can lead to a situation where a community has no longer ways to maintain their livelihood and sustain themselves, and the need to change the place of residence occurs.²² Finally, resource scarcity and unlivable living conditions can lead to displacement, which may lead to conflicts due to, such as those caused by an increase in population.²³

In the terminology concerning the effects of climate change, there have been recognized two types of climate events: slow-onset and sudden-onset weather events. The occurrence of slow- and sudden-onset weather events leads to different types of consequences and the timing of their effects varies. Slow-onset onset changes in weather and the environment are related to long-term and permanent movement of people.²⁴ In such cases, the movement of people can be more planned and structured, as the future changes in the environment can be better predictable and, on some level, prepared. In turn, sudden-onset weather events require rapid answers and migration solutions, especially when there is little or no prior notice, leading to more temporary solutions.

The question of whether climate change alone can be the cause of migration has received differing views.²⁵ As one of the most established scholars of climate change-related migration, Professor Jane McAdam, formulates, that climate change should be seen more as a multiplier of the causes already existing and leading to forced migration, such as socio-economic and environmental vulnerabilities.²⁶ Her work shows that the climate change impact is not the sole reason for migration.

²¹ See Antonio Guterres in an interview in J. Borger, 'Conflicts Fuelled by Climate Change Causing New Refugee Crisis, Warns UN', *The Guardian* (17th June 2008) in McAdam 2011, p. 3

²² In Dabaab, Somalia, more than 220 000 people were displaced after a drought killed their livestock and crops, thereby devastating their food security. See e.g. Environmental Justice Foundation 2022, p. 38

²³ Wennersten – Robbins 2017, p. 21, 24

²⁴ Prokkola et al. 2021, p. 38

²⁵ See e.g. McAdam 2012, p. 24

²⁶ McAdam 2012, p. 24

Additionally, movement can also be partially driven by environmental changes, but the primary reasons are often other factors such as family relations, work, or education.²⁷ Some argue that non-climatic drivers can be of the same value in the decision to migrate as the initial environmental reason, and thus it has been suggested that by improving the ability of people to adapt to the changing climate could potentially reduce need to rely on migration as a solution.²⁸ Addressing the root cause could help prevent unnecessary forced migration.

Niva's research supports McAdam's view that the decision to migrate, in the case of environmental changes is influenced more by income, education, and health than environmental changes.²⁹ She has explored the impact of societal drivers of migration and argues that the significance of societal factors should be remembered even when migration is discussed in the environmental context.³⁰ A person's ability to migrate and adapt to environmental change is impacted by the person's level of social, economic, and political capital.³¹ This relationship is bidirectional, meaning that a person's vulnerability to climate change is interchangeably related to their social status. Thus, the linearity of the level of vulnerability to climate change and the social status of a person undoubtedly has a major role in understanding the issue of climate-related migration. Consequently, understanding these patterns helps to invent policies that will take the root causes of migration into account and can furthermore provide relief and understanding in the situation of climate refugees.

Situations, where a person decides to voluntarily migrate due to sudden- or slow-onset weather events, can be differentiated from the situations where one becomes a climate refugee because the change of location is seen as the last resort of survival. While the decision to migrate refers more broadly to the voluntary choice of people to move, in the case of climate refugees fleeing from one's home area might be the last possibility to maintain a humane living environment or even to stay alive. However, there has been difficulty in establishing a direct link between climate change and

²⁷ *Ibid.*, p. 25

²⁸ Hodkinson et al. 2010, p. 73

²⁹ Niva 2022, p. 31

³⁰ *Ibid.*, p. 31

³¹ *Ibid.*, p. 6

migration, as it is challenging to find a true relationship between a certain environmental factor and the act of migration.³²

2.2 Different Categories of Climate-Induced Migration

The way we talk about the people forcibly displaced because of climate change has a major role in the way the matter is handled both politically and legally. It also affects the discussion around climate refugees. There needs to be made a distinction between the different categories of people who migrate because of weather events – for instance, whether the decision was voluntary or involuntary, and made for human rights-based or economic reasons. The reasons behind migrating for climate impacts, whether it is voluntary or involuntary, have important similarities and thereby the analysis of the thesis will acknowledge both phenomena.

In 2007, the UNHCR published a 10-point action plan for refugee protection and mixed migration, noting the need to address other than the so-called classic refugee-based migration.³³ The plan was updated for its 10th anniversary in 2016 after it had gained importance due to the increase in climate migration. Addressing “mixed migration” aimed to enhance the protection of refugees within various migratory flows and to recognize the need for international protection of those who do not fit inside the refugee protection regime.³⁴ Among others, this included people who had been displaced from their homes due to climate change-related reasons.

From the point of view of international law, *environmental migrants* are a separate group of people from the so-called climate refugees as they do not seek or need international protection in the host state.³⁵ The International Organization for Migration (IOM) has defined environmental migrants as “persons or groups of persons who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad”.³⁶ This definition includes IDPs, as they relocate internally within their home state.³⁷ As an umbrella term, the environmental

³² IOM 2008, p. 55; CPRD 2015, p. 2

³³ UNHCR 2007

³⁴ Betts 2013, p. 14

³⁵ See Chapter 2.1.2

³⁶ IOM 2007

³⁷ See Chapter 2.4.

migrant can however be interpreted as including climate refugees when they are obliged to leave their habitual homes due to compelling reasons for changes in their living environment, even though the difference is in the need for protection. Environmental migrants can include people who seek shelter and thus could be classified as climate refugees.

Environmental migration is a widespread phenomenon among for instance populations in rural areas who rely on subsistence activities, as subsistence livelihoods make people more prone to changes in the environment.³⁸ In environmental migration, the act of migration is thus done as a sort of precautionary mechanism the not avoid the most extreme hardship caused by changing climate, but the situation has not yet evolved to such hardship that would lead to refugee-like circumstances. This however requires that the person migrating has the means to make the decision, which, as seen above, is dependent on societal factors.

In the need for conceptualization for people fleeing deprivations of their rights in Africa, Alexander Betts established the concept of survival migration.³⁹ According to Betts, survival migrants can be defined as “persons who are outside their country of origin because of an existential threat for which they have no access to a domestic remedy or resolution.”⁴⁰ Talking of survival migration adds emphasis to the involuntary nature of the decision to move and to the severeness of the situation many people are facing. In the context of climate-change displaced persons, using language that underscores their predicament is crucial, since currently the phenomenon lacks proper recognition. Avoiding using the term “refugee” in the concept of survival migrant can stem from the reluctance of international community to officially classify climate-change displaced persons as refugees. By not calling these persons refugees, it can be easier to get them recognized in the international community, even though the idea behind the concept is near to climate refugees.

On the other hand, Lydia Hiraide has proposed the concept of ecological displacement.⁴¹ Referring to ecological displacement instead of climate refugees broadens the focus from climate change as the sole driver of displacement to also

³⁸ Obokata et al. 2014, p. 118

³⁹ Betts 2013

⁴⁰ *Ibid.*, p. 23

⁴¹ Hiraide 2023

other environmental causes like volcanic disruptions and landslides.⁴² According to Hiraide, changing the narrative from climate change refugees to ecological displacement would offer more inclusive possibilities for reviewing and understanding why people are displaced within or outside their country of origin without a racialized stigma that surrounds the notion of climate refugees.⁴³ From the perspective of exploring the status and protection of climate refugees, this view offers a valid point by advocating for a less rigid categorization of climate refugees to cover more variation in different situations. Employing a wider approach to forced displacement would thereby enable protection for people affected also by other environmental occurrences beyond those, at least more clearly, attributable to the anthropogenic climate change. The comprehensive range of concepts for persons displaced or migrating due to the effects of climate change describes the urge to separate climate refugees from the “bigger mass” of environmental migration movement.

2.3 Defining a Climate Refugee

The concept of a climate refugee is not defined in any international legal instrument nor other universal agreement and has neither yet been included in any national legislation. However, the concept has been widely recognized especially in scholarly literature. Thus, the existing definitions concerning these displaced persons vary and must be derived from academic literature. The lack of a universal definition has consequently led to the use of different names for this group of persons, and papers reference them as climate refugees, climate change refugees, and environmental refugees interchangeably.

The concept of environmental refugee was first introduced by Lester Brown in the 1970s.⁴⁴ In 1976 Brown and others evaluated the rise of “ecological refugees” in the context of desertification of areas.⁴⁵ It was only after this when in 1985, the United Nations Environment Programme (UNEP) researcher Essam El-Hinnawi defined environmental refugees as “persons who have been forced to leave their traditional

⁴² *Ibid.*, p. 167

⁴³ *Ibid.*, p. 268. For a study of racialized stigma surrounding climate refugees see e.g. Andrew Baldwin, *Racialisation and the Figure of the Climate-Change Migrant*. *Environment and Planning A: Economy and Space*, 45/2013, p. 1474-1490

⁴⁴ Black 2001, p. 1

⁴⁵ Brown et al. 1976, p. 39

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”.⁴⁶ The definition by El-Hinnawi can be found cited in many writings concerning climate-related displacement, and it can be considered as the foundational definition for the concept of climate refugees. British environmentalist Norman Myers defined environmental refugees in the early 1990s as one of the first scholars to explore the intersection of climate change and forced displacement. Myers described environmental refugees as “people who can no longer gain a secure livelihood in their erstwhile homeland because of drought, soil erosion, desertification, and other environmental problems” and who “feel they have no alternative but to seek sanctuary elsewhere”.⁴⁷ Myers recognized that these persons can be both internally displaced or fled cross-border, and the displacement can be semi-permanent or permanent.⁴⁸ A shift towards using the terms *climate refugee* instead of environmental refugee or ecological refugee can be seen in the literature. One explaining factor for this change could be the change of common discussion and narrative to being more climate change-centered rather than seeing environmental changes as a natural phenomenon, not linked to anthropogenic climate change. In general terms, based on the definitions presented by established scholars⁴⁹, I have found that a climate refugee holds the following characteristics: the person is affected by the adverse effects of climate change, they are consequently displaced involuntarily, and they need to migrate across borders.

In the absence of an agreed, unified definition for climate refugees, scholars have presented guidelines as to what the anticipated definition should include if and when one is established. For instance, it has been suggested that the description should address the cause of migration (as in naming the certain environmental or climate-change impact), the type of migration (voluntariness, length, and territoriality), and the justifying of using the term refugee, thereby emphasizing the need to evaluate whether the term refugee is applicable for this group of persons in the first place.⁵⁰ Moreover, as an example of a definition for climate refugees, Wennersten and Robbins have defined climate refugees as “persons who can no longer gain a secure

⁴⁶ El-Hinnawi 1985, p. 4

⁴⁷ Myers 1993, p. 753

⁴⁸ *Ibid.*

⁴⁹ See e.g. El-Hinnawi 1985 p. 4; Myers 1993, p. 753

⁵⁰ Biermann – Boas 2010, p. 63

livelihood in their traditional homelands because of events like sea level rise, extreme weather events, and drought and water scarcity that jeopardize their existence or seriously affect their quality of life”.⁵¹

When the issue of climate refugees attained attention, there were acknowledged three categories of climate refugees.⁵² These categories were persons who have been temporarily displaced, persons who have been permanently displaced, and those who have migrated temporarily or permanently in search of a better quality of life because of environmental degradation.⁵³ The people who are temporarily displaced will return to their home area after the climate event, such as a hurricane, is over. The ones who are permanently displaced on the other hand must resettle to their new home area and are likely to not return. Categorizing different types of climate refugees helps to explore root sources relating to the migration patterns, thereby learning their needs and enabling the provision of appropriate assistance to them.

Speaking about climate refugees has not attained only positive affirmation. The term climate refugee has been avoided being used by some due to the baggage attached to the term *refugee*.⁵⁴ Using the term refugee can be seen as having too many emotional implications⁵⁵, in addition to the attitudes attached to it in global and national politics. In controversy, it can also be requested that the term refugee be used in the context of involuntary climate displacement since the persons can be facing conditions of similar severity as the classic 1951 Convention refugees. This could enhance climate refugees’ position in the international community. However, the IOM suggested in 2014 that in the lack of a legal definition of climate refugees, the term should not be used, because there is a risk that this would undermine the status of refugees.⁵⁶ Here, the IOM refers to the 1951 Convention refugees. Maybe, it could be possible to address the climate-induced forcibly displaced persons as some other name than refugees, like Betts suggested the term “survival migrant”, but for now, there have not been any official initiatives, and using the term refugee would properly entail the predicament of the displaced.

⁵¹ Wennersten – Robbins 2017, p. 46

⁵² El-Hinnawi 1985, p. 4

⁵³ Williams 2008, p. 506

⁵⁴ Berchin et al. 2017, p. 149

⁵⁵ *Ibid.*

⁵⁶ IOM 2014, p. 22

2.4 Internally Displaced Persons

Not all people who are forcibly displaced due to climate change's adverse effects cross international borders. The ones who remain displaced in their home states are defined as Internally Displaced Persons (IDPs). In comparison to the climate refugees, the IDPs have been better recognized by the international community, and in some regions, there have been regulated declarations concerning specifically them. Often in the discussion on climate refugees, IDPs are brought up as a reference to an already recognized group of environmentally displaced.

The United Nations published its Guiding Principles on Internal Displacement in June 2001. In the introduction of the principles, IDPs are defined as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border”.⁵⁷ By phrasing natural disasters as a driver of displacement, the notion of IDPs is suitable for people displaced due to the adverse effects of climate change, but only if they remain within the borders of their country of origin. As to defining disasters, the Platform on Disaster Displacement (PDD) refers to a definition established by the United Nations Office for Disaster Risk Reduction.⁵⁸ According to them, a natural disaster refers to a serious disruption of the functioning of a community or a society involving widespread human, material, economic, or environmental losses and impacts, to the extent that it exceeds the ability of the affected community or society to cope using its resources.⁵⁹ The definition of disaster by the PDD does not have a straight link to the adverse effects of climate change, but within this research, it can be seen as exemplifying what the disasters can be that people displaced due to climate effects are facing.

As mentioned, IDPs have also been regulated in regional instruments. In Africa, IDPs are regulated by the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, called the Kampala Convention. The Convention was adopted in October 2009. The definition, as stated in Article 1,

⁵⁷ UNCHR 1998, p. 1

⁵⁸ The Platform on Disaster Displacement 2020, p. 12

⁵⁹ Definition derived from UNDRR home page. See e.g. <https://www.undrr.org/terminology/disaster>. Accessed on 7th February 2024.

similar to the UN Principles includes persons who are displaced due to a natural or human-made disaster.⁶⁰ There can be multiple reasons why a person chooses not to seek international relief but remains migrated in their home state. For instance, women, children, and the elderly are among the poor as groups having a higher threshold to migrate cross-borders. For some, there does not simply exist the means to migrate cross-border. On the other hand, for some, the decision to stay as an IDP is for the lack of coping in new and stressful environments.⁶¹

As in some cases the decision to stay as an IDP is the result of outside factors, the amount of IDPs does not entail the need to migrate transnationally. This question would be important to answer in order to really understand the scope of climate refugees globally. However, as seen above that societal factors play a significant role in the overall decision to migrate, it is possible that the persons in the weakest position do not have the means to migrate transnationally and thus end up relocating as IDPs. On the other hand, it can be the first choice of the person to relocate to a more familiar area. It is a question for research to show how many would prefer to relocate internationally in the lack of protection by their home states but are unable to act accordingly and thus relocate inside the home state. Such data would be relevant for the study of climate refugees.

While this thesis focuses on the status of climate refugees, people who are displaced cross-border and are liable to the rules of international law, introducing IDPs is important to understand the entirety of the movement of masses of people due to environmental reasons. As many as 8.7 million people were internally displaced due to disasters as of 31st December 2022 according to the Internal Displacement Monitoring Centre.⁶² The interplay between climate refugees and internally displaced persons helps to understand the migration flows and patterns of people facing the adverse effects of climate change, and the relief regimes concerning IDPs can help to navigate how climate refugees could be recognized under international law and what kinds of protection mechanisms could suit.

⁶⁰ African Union 2009, p. 3

⁶¹ Ayazi – Elsheikh 2019, p. 47-48

⁶² Internal Displacement Monitoring Centre 2023, p. 8

2.5 Why is Defining Climate Refugees Important?

The UN has avoided using the term climate refugee or environmental refugee, understandably due to the lack of an official definition. UNHCR has merely mentioned that “climate refugees’ is a phrase often used in the media to describe people who are forced to move from their homes due to climate-related events, but it is not a term officially recognized in international law”.⁶³ To understand the phenomenon of environmental displacement, it is relevant to recognize how climate refugees differ from others environmentally displaced. The lack of a universal definition of climate refugees leads for instance to a lack of research concerning the issue, because not having a common definition makes collecting data more difficult.⁶⁴ This evidentially results in a lack of understanding of the scope of the issue and appropriate policies since they cannot be reasoned with research results. Furthermore, the absence of a legal definition results in having multiple varying definitions from scholarly, which again leads to issues in tackling the problem by cooperation and managing climate refugees internationally.

It has been anticipated that climate refugee as a term is too vague to cover all climate change-induced migration.⁶⁵ Moreover, not giving these displaced people a definition leads to undefining their status under international law and challenges in protecting their fundamental rights while being displaced. How we define this group of people can have a significant impact on how they are treated in the international community and national politics. As an example, the term “refugee” carries emotional baggage, and in the political context, refugees can raise questions about funding and national safety. The term migrant on the other hand can imply only to a person deciding to move and usually is, or at least should be, capable of providing for themselves. To offer climate refugees protection and relief mechanisms, it is significant to separate them from migrants, and the most important factor in this division is the voluntariness of the migration decision. Climate refugees, just like traditional 1951 Refugee Convention refugees, flee severe conditions from their home states out of

⁶³ UNHCR, ‘Climate change and displacement: the myths and the facts’, 15th November 2023. Accessed from <https://www.unhcr.org/news/stories/climate-change-and-displacement-myths-and-facts>. Date used 20th May 2024.

⁶⁴ Biermann – Boas 2010, p. 62

⁶⁵ McDave – Dagadu 2023, p. 169

necessity, yet when compared to environmental migrants who choose to relocate, the fundamental rights in danger in their home states are not sufficiently noted.

Some critics have stated that the term “climate refugee” is an unfitting term for the phenomenon of environmental displacement because it is too vague⁶⁶ and highlights as a term too much of a linear, causal, and straight connection between climate change and the forced movement, even though the migration causes are more complex and caused by multiple factors⁶⁷. However, there should be some way of addressing this significant group of forcibly and transnationally displaced persons. If the international community defined the climate change-induced displaced persons as climate refugees, they could be entitled to the rights that international law provides for refugees. However, applying the refugee term to these people seems to lack legal ground.⁶⁸ Having a definition for the displaced persons who fill the presented requirements of climate refugees makes it possible to more deeply understand the scope of this gap in international law.

2.6 Chapter Summary

Human activities have led to the predicament of people living in areas vulnerable to the adverse effects of climate change, like sea level rise, droughts, and extreme weather events. The reasons behind displacement vary, and displacement might not be solely based on environmental reasons, even though they would play a crucial part in it. This multicausality of the involuntary movement of people, who are greatly affected by the adverse effects of climate change, makes climate refugees difficult to define. As an example, defining specific climate reasons and attributing the climate event to anthropogenic climate change is complex, and pinpointing whether the weather event has been the determining factor in displacement can be tough. When one characteristic of a climate refugee is being a victim of the adverse effects of climate change, the question arises of what kind and how big of a role the climate change effect must have as the initiator of being forcibly displaced so that the climate refugee definition applies.

In this research, climate refugees are defined as those persons who are forcibly displaced due to being affected by the adverse effects of climate change and who migrate transnationally. As this paper has presented, there are multiple categories of

⁶⁶ *Ibid.*, p. 169

⁶⁷ *Ibid.*, p. 169

⁶⁸ See Chapter 3.

persons displaced due to climate change effects, where the characteristics vary from voluntary and forced movement and in which features like vulnerability and socio-economic status play a role. In the discussion concerning climate change and migration of people, climate migrants seems to be the umbrella term under which more specific concepts like climate refugees belong. Yet, as climate refugees is not a universal and recognized term and it does not have a legalized definition, the definitions made in scholarly writings can have many differences. Thus, it is understandable that the vagueness of the term can be seen as a weak spot in the field of study of climate refugees. One can also ask, why are IDPs defined legally, but climate refugees are not? Is it because the IDPs remain the responsibility of the home state? The regime of IDPs can however be used to guide the handling, identifying, and defining of issues related to climate refugees.

3 International Refugee Law and Climate Refugees

The main legal instrument establishing the current international legal framework for refugees is the United Nations Convention Relating to the Status of Refugees of 1951⁶⁹ (the 1951 Refugee Convention or the Convention) and its Optional Protocol of 1967⁷⁰. The Refugee Convention was first established after the Second World War to provide a framework to control the masses of refugees born during wartime. Only after the Optional Protocol, the Convention was extended to apply to people who did not belong to the initial geographical and time limitations, and there have not been amendments since. Keeping up with the changing world has been proven to be difficult for the Convention, whereas there have not been new amendments since the 1967 Protocol.

The 1951 Refugee Convention does not include a definition of a climate refugee. Furthermore, despite the at least alarming occurrences of disastrous effects of global warming lately, such as the floods in Pakistan displacing tens of millions of people in 2022⁷¹, the international community has not provided refugee law for climate refugees nor extended the applicability of the 1951 Refugee Convention to them. The status of persons fleeing their home states because of the adverse effects of climate change has been questioned for decades, yet there have not been strong enough initiatives to provide laws that would have led to ratification. This Chapter will examine what the classic refugee legislation provides and how it relates to the concept of climate refugees.

3.1 Introduction to International Refugee Law – The Classically Understood Refugee Protection Regime

The main instrument of refugee law in the international context as well as the instrument guiding national laws is the 1951 Refugee Convention by the UN. The governing body of the implementation of the 1951 Refugee Convention is the United Nations High Commissioner for Refugees, which is also called the UN Refugee Agency.

⁶⁹ United Nations General Assembly, Convention Relating to the Status of Refugees, United Nations, Treaty Series, vol. 189

⁷⁰ United Nations General Assembly, Protocol Relating to the Status of Refugees, United Nations, Treaty Series, vol. 606

⁷¹ See e.g. OCHA 2023

Especially after the 2015 refugee crisis the international refugee regime has been put to test, and climate change-related displacement ought to be the next wave. Whilst the 1951 Refugee Convention is the main instrument for national and regional international refugee policies, the examination of the current refugee law and its applicability to climate refugees is in this thesis focused on the Convention. The suitability of the current international refugee law to climate refugees needs an evaluation of the core elements of classic refugee protection.

3.1.1 The Definition of a Refugee

In Article 1A(2), the 1951 Refugee Convention defines a refugee as “any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”. The main elements of the refugee definition are the fear of being persecuted, the discriminatory nature, and being outside one’s country of origin.

The 1951 Refugee Convention and its Optional Protocol have been ratified by 149 States. In all of these states, a refugee and her right to international protection is dependent on the Convention’s definition. Guidance of the application of the Convention and thereby evaluating the criterion of a refugee and its applicability in different situations is left to different international and national courts and tribunals, from the International Court of Justice (ICJ) to the national courts. The UNHCR operates as the supervisor of the application of the Convention but does not have authority to define or determine on particular interpretation of the Convention Articles.⁷² In conclusion, in the lack of such an “ultimate” authority, the interpretation of the refugee definition has not been completely consistent by the signatory states and the interpretations can vary.⁷³ The possibility of interpreting the Convention for the benefit of climate refugees will be examined in this Chapter.

⁷² Hathaway – Foster 2014, p.3

⁷³ *Ibid.*, p. 3

The framework of international protection established by the UN in the 1951 Refugee Convention and its Optional Protocol of 1967 as well as the operations of the UNHCR largely manages and guides the field of refugee protection worldwide. Even in countries that have not ratified the Convention, there are cases where the Convention refugee definition has been applied. For instance, in Bangladesh, there are millions of Myanmar refugees, the Rohingya refugees, who lack legal status because Bangladesh is not a signatory state to the Convention. However, the UNHCR acts on behalf of the displaced behalf, because it counts them as refugees.⁷⁴

International refugee law includes elements that are customary international law, meaning that these rules apply and obligate all. These are for example the principle of non-refoulment⁷⁵, temporary refuge and the right to be granted asylum⁷⁶. The principle of non-refoulment is a fundamental principle in the international protection system. According to the principle of non-refoulment, a person shall not be returned to their home state if their life or freedom would be threatened because of their race, religion, nationality, membership of a particular social group or political opinion, or if there are substantial grounds for believing that they would be in danger of being subjected to torture.⁷⁷ Because some major refugee-intaking countries are not part of the 1951 Refugee Convention such as Bangladesh as noted above, as well as India and Pakistan, the role of the customary norms in refugee law can have a big impact on the humanitarian purpose of the refugee protection regime.⁷⁸ Overall, the international refugee protection regime heavily leans on the content of the 1951 Convention, and as the case of Rohingya refugees proves, the Convention has an undeniable role in refugee protection.

3.1.2 The Well-Founded Fear of Persecution

At the core of the classic refugee definition lays the notion of the well-founded fear of persecution. According to the Convention definition of a refugee, the persecution must be based on the grounds established in the Convention Article 1A(2), namely race, religion, nationality, membership of a particular social group, or political

⁷⁴ See e.g. UNHCR 2023, Rohingya Refugee Crisis Explained

⁷⁵ Hamlin 2021, p. 102

⁷⁶ Lambert 2021, p. 242-243

⁷⁷ UN General Assembly, Convention Relating to the Status of Refugees, Article 33; Islam et al. 2013, p. 100

⁷⁸ Lambert 2021, p. 256

opinion. As ordinarily in international law, the terms of the Article are to be interpreted following the ordinary meaning given to them.⁷⁹

Persecution *per se* has not been defined in the 1951 Refugee Convention. This allows the notion of refugees some flexibility since every single case where the well-founded fear of being persecuted is invoked, should be examined individually. According to the UNCHR's Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection, the evaluation of the applicant's fear is subjective and based on the refugee applicant's statements of the situation.⁸⁰ The person's fear is well-founded when it can be proven that continuing to stay in one's home country has become, or in case of returning would become, intolerable for the reasons outlined in Article 1A(2).⁸¹

In the examination of a real risk of being persecuted aspects such as the discriminatory nature of the act, personal scope, and the temporal scope of the persecutory act are evaluated. The threshold to establish a well-founded fear of persecution is high, and while it is commonly required that there is a subjective and objective sense of a well-founded fear to constitute persecution, the burden to prove the subjective fear of persecution remains on the applicant.⁸² The 1951 Refugee Convention has a rather narrow view of the causes of forced displacement where the Convention does not recognize climate events or disasters as grounds for persecution. The next sub-chapter will evaluate the possibilities to interpret the 1951 Refugee Convention's refugee definition as including climate refugees.

3.2 Can the Nature 'Persecute'? Applicability of the 1951 Convention on Climate Refugees

The possibility of the 1951 Convention to provide relief or protection mechanisms to those forcibly displaced due to environmental sudden- or slow-onset movements has received both support and arguments against it. The difficulty in recognizing the group of climate refugees as entitled to international protection lies in the wording of the refugee definition provided in Article 1 of the 1951 Refugee Convention and

⁷⁹ United Nations, Vienna Convention on the Law of Treaties, United Nations Treaty Series vol. 1155, Article 31(1)

⁸⁰ UNHCR 2019, p. 17

⁸¹ *Ibid.*, p. 20

⁸² Hathaway – Foster 2014, p. 92

especially the list of grounds accepted for having a well-founded fear of persecution. Furthermore, the list of Article 1A(2) in its exhaustiveness limits the possibilities to widen its scope of application.

3.2.1 Arguments Against the Applicability

It has been proven to be difficult to fit the situation of people forcibly displaced from their home states due to climate reasons to the Convention definition of a refugee.⁸³ The element of well-founded fear of being persecuted in the definition of Article 1A(2) is the one that sparks the most curiosity and concerns among scholars, and is the corner stone argument against the applicability of the Convention to climate-induced displacement. Due to the word-by-word interpretation of refugee definition the scope of applicability of Article 1 is limited outside natural drivers of displacement. Natural hazards or other effects of climate change do not establish persecution in the meaning of refugee definition, because a Convention refugee is someone who flees political, ethnic, or religious persecution.⁸⁴ Neither the 1967 Protocol extends the Convention definition to include environmental displacement as a determinant of a refugee.⁸⁵ So, the international refugee law regime poorly provides protection for climate refugees due to its wording.⁸⁶

The Convention refugee definition has currently been seen as too narrow to be applied for climate refugees where it excludes environmental considerations.⁸⁷ Furthermore, difference in the application of the Convention's refugee definition and climate refugees can be found from the evaluation of the personal scope of both definitions. In classic refugee definition, persecution must be discriminatory or otherwise the act is not seen as persecuting a person. The non-discrimination norm is a central principle that guides the interpretation of the refugee definition.⁸⁸ According to McAdam, where discriminatory element is required for a violation of a right to amount to persecution, persecution does not apply to people displaced by climate change's effects.⁸⁹ Thus, in evaluating the suitability of refugee definition to climate refugees, the discriminatory element of being persecuted is hard to find,

⁸³ UN Human Rights Committee, *Teitiota v New Zealand*. See Ch 4.2.1.

⁸⁴ Wennersten – Robbins 2017, p. 44, 46

⁸⁵ *Ibid.*, p. 43

⁸⁶ *Ibid.*, p. 37

⁸⁷ *Ibid.*, p. 46

⁸⁸ Scott 2020, p. 113

⁸⁹ McAdam 2012, p.44

because climate change does not ordinarily discriminate in its effects, even though discrimination could happen without a discriminatory intent.⁹⁰ Thereby, in the case of classic Convention refugees, the characteristics outlined in Article 1A(2) operate as the motivation for the persecutor, which climate refugees do not have.

3.2.2 Arguments Supporting the Applicability

Despite the apparent inapplicability of the current 1951 Refugee Convention refugee definition to climate refugees, there have been found some possibilities for an extension of the interpretation of the definition. As one of the first scholars focusing on the issue of environmental refugees, Myers has suggested to simply expand the notion of a refugee to include climate refugees and stop ignoring the issue in the international community.⁹¹ However, such direct views have not been raised later at least to the point for the interpretation to be widened, but there have been presented some more complex interpretative scenarios.

The Convention could apply to climate refugees where there can be situations that can cause persecution like situations. Already in 1998, Jessica Cooper wrote that environmental refugees are persecuted due to their belonging to *a particular social group*, as listed as a persecution ground in the refugee definition, while the persecutor is the State government that fails to protect the environment from degradation and harms the people living in the area.⁹² This argument has later been declined by Ragheboom, because according to her, the states of origin do not intentionally harm their citizens by the degradation of nature, yet the states lack political power which leads to inaction, and this cannot be counted as persecution.⁹³

What if the lack of political power is however intentional? For instance, resource scarcity that leads to local conflicts over natural resources could be an example scenario.⁹⁴ The impact of climate change, by its effects, could expose these persons to a situation comparable to persecution. Scott has indeed established that being persecuted is an equation of serious harm and the failure of state protection. The element of serious harm would not be the result of one single act but from an

⁹⁰ Scott 2020, p. 113

⁹¹ Myers 2002, p. 611-612; See also Myers 2005, which is a newer publication of the same paper.

⁹² Cooper 1998, p. 522, 526, 528

⁹³ Ragheboom 2017, p. 443

⁹⁴ Ayazi – Elsheikh 2019, p. 142

accumulation of measures, such as denials of economic rights, among others.⁹⁵ Reflecting this theory to the situation of climate refugees, this supports the possibility to consider the adverse effects of climate change, when attributable to the state's failure to prevent or hinder climate change, as a base for a well-founded fear of being persecuted. The persecutor in this case would be the state.

There have been identified a few more situations, where the refugee definition could apply to climate refugees and the state's role plays an essential role in it, however, the link to the Convention grounds seems to be necessary. Firstly, this could be possible in the situation of a slow- or sudden-onset disaster, that is exacerbated by the denial of assistance of state authorities, and the denial is based on race, religion, nationality, membership of a particular social group or political opinion.⁹⁶ In this case, being a victim of the adverse effects of climate change could establish persecution, but it is mandatory to have a Convention ground related to the fear of being persecuted. Secondly, situations of severe human rights violations or armed conflicts happen due to the diminishing of natural resources that is the result of climate change would possibly suffice, provided that the situation includes a discriminatory factor.⁹⁷

In 2020, the UNHCR published a study of the legal considerations regarding the international protection claims in the context of adverse effects of climate change and disasters. The study explores situations where a well-founded fear of persecution could occur in cases of climate refugees. For instance, the study proposes that populations who suffer from resource scarcity due to adverse effects of climate change and are discriminated against in the resource access, could have a claim for Convention refugee status.⁹⁸ The determining factor is whether the relief measures or other actions taken by the state varies between groups on basis of race, ethnicity, religion, politics, gender, or social grounds, i.e. the Convention grounds.⁹⁹ The UNHCR also recognizes that the impacts of disaster risk reduction and national and international efforts to mitigate the adverse effects of climate change and disasters must be taken into account in the evaluation of a refugee claimant's circumstances.¹⁰⁰ Where the UNHCR has implied to be a possibility to apply international refugee law

⁹⁵ Scott 2020, p. 37

⁹⁶ Mayer – Crépeau 2017, p. 194

⁹⁷ *Ibid.*, p. 194

⁹⁸ UNHCR 2020, p. 5

⁹⁹ *Ibid.*, p. 5

¹⁰⁰ *Ibid.*, p. 5

for cross-border displacement in “some circumstances”¹⁰¹, it seems that it is required to have also a Convention ground for the displacement. In this approach, it is the sum of the circumstances that determine the possible applicability of refugee law, but alone, being a victim of the adverse effects of climate change does not provide applicability of the Convention.

To mention, Scott has also seen that discrimination in the context of disaster displacement can be found *ex ante*, by connecting the vulnerability of some people to the effects of climate change to previous patterns of discrimination.¹⁰² Thus, discrimination can be found by examining the historical perspective of vulnerability to the effects of climate change. For instance, the history of industrialization and colonialism have made some areas drastically more vulnerable to the effects of climate change compared to the states in the Global North in the first place. This is a key consideration in human rights law and will be evaluated later. Overall, the applicability of the 1951 Refugee Convention to climate refugees seems largely dependent on having even partially a Convention ground behind the displacement.

3.3 The Political Debate on Refugees

It has been stated that if persecution is to be linked to the situation of climate refugees, whether it be due to the application of the Refugee Convention or by a new internationally binding agreement, a new understanding of persecution is required.¹⁰³ It has been recognized by the practitioners of international refugee law that the current international protection regime, which leans on the 1951 Refugee Convention, no longer fills its needs, since new categories of refugees are emerging.

However, the limitations in the refugee definition of the Convention are not the sole reason for the lack of recognition of climate refugees, but also the international and national politics and attitudes towards refugees affect the situation. The intaking countries such as the ones in the Global North have been reluctant to increase the number of persons admitted international protection. The discussion around

¹⁰¹ UNHCR 2022, p. 2. However, the UNHCR note that if the refugee definition does not apply, they suggest the applicability of international human rights law by the principle of non-refoulement.

¹⁰² Scott 2020, p. 15, 27. However, there could be a theoretical possibility to argue that the lack of the Western states to act against carbon emissions and the lack of protective measures of the home states could be seen as enabling the severe effects of global warming, which have resulted in persecution like situations for the climate refugees. This theory is analyzed more precisely in Chapter 5.2.2.

¹⁰³ Ayazi – Elsheikh 2019, p. 29

refugees overall is often polarized, and for instance, in Finland it is twisted with arguments of the so-called “welfare migrants” or “welfare refugees”¹⁰⁴, people who are said to take advantage of the refugee protection system. The case of climate refugees is no exception. The overall debate and the tone in political discussion surrounding climate refugees impacts on how the possible recognition of climate refugees is seen in the international community – as a threat or an opportunity. The movement of people in face of climate change is in the end unavoidable.

As mentioned, there is overall lack of political will to widen the refugee protection regime, especially the states usually receiving refugees. The Covid-19 pandemic shut the borders from people’s movement, including refugees, in many States, and the welcoming of refugees has since not recovered.¹⁰⁵ Besides, whilst the classic political refugees have been considered to have the possibility to repatriate to their home State, climate refugees are in a different position, since for instance in the case of the small island states, there is no possibility to repatriate to a land that no longer exists¹⁰⁶ making the hosting of these environmentally displaced persons permanent. The permanency of climate change-related displacement can also affect to the attitudes towards widening the interpretation of the Convention to climate refugees.

As a timely example from Finland, the intake of refugees from the Eastern border has raised a heated political debate, when the Finnish government decided to close its Eastern border with Russia to prevent asylum seekers from coming through Russia to Finland in the Autumn of 2023.¹⁰⁷ While the decision to close borders was based on suspecting Russian authorities of facilitating illegal crossings to Finland¹⁰⁸, and justified with reasons of national security and public order¹⁰⁹. The concern of Russian using refugees as a means to disturb the national safety of Finland has led to the Finnish parliament proposing a new law according to which Finland could refuse to

¹⁰⁴ In Finland, the debate surrounding refugees has created a term for people who seek refugee but who are considered as misusing the refugee protection scheme in the hope of higher living conditions in a welfare state. In Finnish, the concept is called *elintasopakolainen*, which by straight translation means a living condition refugee. The concept is usually brought up by people who criticize the current refugee protection regime as being too. See e.g. Koskela 2013, p. 24, “The use of this word implies that the reason why these refugees come to Finland is to take advantage of the services of the welfare state, rather than to escape an actual life-threatening situation in the country of origin”.

¹⁰⁵ Ghezelbash – Feith Tan 2020, p. 678

¹⁰⁶ Salem – Rosencranz 2020, p. 4

¹⁰⁷ BBC 2023a

¹⁰⁸ BBC 2023b

¹⁰⁹ Rajavartiolaitos 2024

take asylum applications at and near the Eastern border unless the seeker is in a severely vulnerable position.¹¹⁰ Despite being against multiple Finland-binding international and EU legislation, the right to seek asylum is reconsidered. From my point of view, this sends an alarming message that the current attitudes towards asylum seekers are tightening. However, only the time will reveal the political state of refugees and displacement in future.

3.4 Chapter Summary

Now, when the 1951 Refugee Convention's rules are examined in the light of climate refugees, and the possibility of the adverse effects of climate change to amount to persecution-like situations, it appears that the applicability of the Convention is not very successful, or at least is limited to the conditions where there is a further, Convention related reason to being displaced than the mere environmental cause. Bearing in mind the multicausality of climate refugees' displacement, the evaluation of the Convention's applicability should, however, in each case, be examined in precision. To the misfortune of many displaced, the 1951 Refugee Convention has not kept up with the development of international protection needs.

Expanding the interpretation of the refugee definition of the 1951 Refugee Convention to include climate refugees is not however completely harmless. As it has been pointed out, the expansion of the refugee status could lead to weaken the current right to international protection.¹¹¹ Furthermore, modifying the 1951 Refugee Convention has not been supported in scholarly literature.¹¹² This point of view links to the issue concerning the overall international refugee law politics and the willingness of States to intake refugees, which was referred to earlier in this paper.¹¹³

From the point of view of climate refugees, since the acceptance of refugees is already in decline, the possibility of establishing a new category of refugees and finding the compassion of the developed states in the Global North to extend the applicability of the 1951 Refugee Convention to climate refugees seems challenging. It has been recognized that the tone of discussion around climate refugees already fails to

¹¹⁰ Raita-Aho 2024

¹¹¹ Picchi 2016, p. 579

¹¹² Mayer – Crépeau 2017, p. 336

¹¹³ See Chapter 3.3.

recognize the involuntariness of the migration¹¹⁴ and in the light of the past and present attitudes towards refugees, this can be bad news for the future climate refugees. Moreover, even the current international refugee law's obligations to protect refugees is on some occasions unfulfilled by State.¹¹⁵ For the extended applicability of the Convention to be effective in the case of climate refugees, the vast majority of the states receiving refugees should agree to it.

However, overall, the applicability of the Convention definition to climate refugees is at the moment is dependent on whether the person has faced direct and intentional harm in the context of climate change only, if the harm is based on a Convention ground.¹¹⁶ Currently, the applicability of the 1951 Refugee Convention to climate refugees requires that the actual reason for refugee status lies within the Convention grounds. Thereby, it is more likely to, if in any case, establish the Convention refugee status in the cases of foreseeable slow-onset natural events, than in sudden-onset events like hurricanes.¹¹⁷ This however does not establish relief for those displaced only because of adverse effects of climate change, but it is important to see that there is some possibility of finding refugee status in the context of natural disasters and the adverse effects of climate change, and thereby enable protection mechanisms to them.

As illustrated in this chapter, it seems that expanding the interpretation of the 1951 Refugee Convention to climate refugees does not get large support from the international law community.

¹¹⁴ Wennersten – Robbins 2017, p. 230

¹¹⁵ Costello et al 2021, p. 18

¹¹⁶ Scott 2020, p. 87

¹¹⁷ *Ibid.*, p. 142

4 Human Rights Law and Climate Refugees

International refugee law is closely linked to human rights law by its humanitarian nature. Furthermore, in the first place, refugee law aims to ensure the protection of human life and the value of human rights. When international refugee law does not provide legal status and thereby protection mechanisms for climate refugees, alternative remedies can be sought from the international human rights law. By interpreting international human rights law instruments, studying the newest policy statements concerning climate change and human rights, or exploring the case law of human rights courts, we can uncover the possibility of invoking human rights law as part of the climate refugee protection regime. In addition, protection for climate refugees can be sought from the common principle of the responsibility of states to protect the human rights of individuals. In the context of climate change and its effects, the question arises of whose responsibility are the adverse effects of climate change, their impact on fundamental human rights and taking care of the people forcibly displaced. This chapter will study whether the implementation of human rights law helps to recognize climate refugees under international law.

4.1 Human Rights and Forced Climate-Related Migration

In the case where a person's habitual place of residence becomes unviable due to the adverse effects of climate change, whether sudden-onset or slow-onset events, many fundamental human rights are at risk, for instance, the right to life¹¹⁸, the prohibition of torture and cruel, inhuman or degrading treatment¹¹⁹, and the right to a private and family life¹²⁰. International human rights law applies to climate refugees as they do to all persons, even though the classical definition of a refugee and rules of international protection would not apply. Thus, the protection status can also be sought from the principles of human rights law. Human rights law has been seen as a promising regime to fill the gaps in the protection of climate refugees due to its quality of being capable of developing together with the developing world as a living instrument.¹²¹ For instance, a right to climate protection has been suggested to enhance the situation of people whose rights are vulnerable to climate change.¹²²

¹¹⁸ The International Covenant on Civil and Political Rights from 1966, Article 6

¹¹⁹ *Ibid.*, Article 7

¹²⁰ *Ibid.*, Article 17

¹²¹ Hatano 2021, p. 42

¹²² Kahl 2022, p. 178

Moreover, the first cases of climate refugees have been examined through the lens of human rights law.

In 2009, the UN Human Rights Council (UNHRC) published its Annual report with the theme being the relationship between climate change and human rights.¹²³ The Council recognized the “human rights implications of climate change-induced displacement and conflict.”¹²⁴ In the report, the UNHRC identified four main scenarios of climate change-related displacement: 1) weather-related disasters, such as hurricanes and flooding, 2) gradual environmental deterioration and slow-onset disasters, such as desertification, sinking of coastal zones and possible total submersion of low-lying island States, 3) increased disaster risks resulting in relocation of people from high-risk zones and 4) social upheaval and violence attributable to climate change-related factors.¹²⁵ In the report, the UNHRC noted that while persons moving cross-border due to “environmental factors” have general human rights in the State they relocate, they often do not have the right to enter that State.¹²⁶ This is a valid concern because a person cannot claim her rights from a State in which territory she is not. Furthermore, as another issue the UNHRC pointed out the total submerge of small island states as in the relationship between the human rights of the people displaced from the sinking island and the rights of the receiving state, and whether these people will have a right to reside in the receiving state.¹²⁷ The UNHRC stated that “dealing with such possible disasters and protecting the human rights of the people affected will first and foremost require adequate long-term political solutions, rather than new legal instruments”.¹²⁸ The role of human rights law in the case of environmentally displaced persons has thus been institutionally recognized.

In the assessment of a person’s capability to overcome environmental challenges caused by climate change and to claim protection, the human rights law perspective enables evaluation of the responsibility of a state to provide the fulfilment of fundamental human rights of the displaced, including climate refugees. By this viewpoint, the preventative or otherwise supporting actions by a climate refugee’s

¹²³ United Nations Human Rights Council 2009

¹²⁴ *Ibid.*, p. 1

¹²⁵ *Ibid.*, p. 19

¹²⁶ *Ibid.*, p. 20

¹²⁷ *Ibid.*, p. 20-21

¹²⁸ *Ibid.*, p. 20-21

home state to protect her human rights can have an impact on the assessment of whether claims of human rights violations can be successful in the meaning of getting protection in cases of forced displacement.

4.1.1 State Responsibility to Protect Human Rights

Ordinarily states only have jurisdiction over the people within their territory. When protection for climate refugees is sought from international human rights law, the question arises of whether these persons should claim their rights from the receiving state to which they migrate, or from their home state. Moreover, would it be possible to claim rights from both? As one of the basic principles of human rights law, state responsibility requires that states both refrain from violating human rights and aim to prevent possible human rights violations. In the context of displaced persons, the question of jurisdiction is more complex.

The reason why state responsibility in the context of climate refugees has a special role is that it is rarely the fault of the individual that they suffer from the adverse effects of climate change and bear the consequence of dislocation. The adverse effects of climate change, such as floods and cyclones, however, are not a mere consequence of nature. Yet in the bigger picture a result of government actions, for instance due to inadequate laws and policies, and corrupted officials.¹²⁹ To address issues such as how to protect climate-displaced persons and who should bear the responsibility of protecting them, the relationship between respect for state sovereignty and the responsibility of states to protect fundamental human rights should be examined.¹³⁰ In addition to the human rights law obligations, in the context of climate change, states have responsibilities under environmental law-related international instruments as well.¹³¹

4.1.2 Extraterritorial Applicability of International Human Rights and the Principle of Non-Refoulement

When the view of environmental displacement is focused on climate refugees, one of the main questions is the extraterritorial applicability of human rights. In the case of IDPs, who are overall better covered under international law, the displaced can claim

¹²⁹ McAdam 2012, p. 38

¹³⁰ McDowell – Morrell 2010, p. 82

¹³¹ See Chapter 5 concerning environmental law related obligations.

the fulfillment of their human rights by their own State's government.¹³² However, when a climate refugee crosses an international border, and leaves their home state, it is not as clear who should be responsible of guaranteeing the fulfillment of their fundamental human rights.

As the UNHCR has recognized, the right to life, adequate food, and to self-determination among others are threatened by climate change.¹³³ In principle, a state is only obliged to provide these rights to its citizens within the state's territory.¹³⁴ For instance, according to the ICCPR in Article 2, the states party to the Convention must respect and ensure the rights of the Convention "within its territory and subject to its jurisdiction".¹³⁵ Moreover, according to the principle of state sovereignty, the state cannot interfere in situations on the territory of another sovereign state. In migration and refugee questions, the extraterritorial human rights obligations have had a special role.¹³⁶ While classically, the responsibility for protecting human rights applies only territorially for the states, McAdam has noted that while climate change is an international problem, the response to human rights violations caused by climate change should be answered in a way that "goes beyond the traditional state territory/jurisdiction link".¹³⁷ One example to expand territoriality of human rights obligations in the advance of climate refugees is to apply the non-refoulement principle.

The principle has been stated for instance in Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the UNCAT).¹³⁸ The principles demands that a State must refrain from returning or expelling individuals to situations where they can face persecution, torture, or other such serious harm, even when the person is in the territory of a foreign State. In the case of climate refugees, who claim recognition of their rights in the territory of a foreign state, if they are accepted to enter the state's border, the application of the non-refoulement principle could be argued where the refugee would face inhuman or degrading treatment in their home country due to the adverse

¹³² Mayer – Crépeau 2017, p. 142

¹³³ United Nations Human Rights Council 2016, p. 2

¹³⁴ Gibney et al. 2022, p. 14

¹³⁵ The International Covenant on Civil and Political Rights from 1966, Article 2

¹³⁶ Gibney et al. 2022, p. 153

¹³⁷ McAdam 2012, p. 91

¹³⁸ UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 10th December 1984

effects of climate change. As the non-refoulement principle is also stated in Article 3 of the European Convention on Human Rights¹³⁹ and Article 4 of the European Union Charter on Fundamental Rights¹⁴⁰, the European Migration Network (EMN) has supported the possibility of linking the non-refoulement principle to climate-change induced displaced persons.¹⁴¹ In fact, the EMN has seen that the famous Teitiota¹⁴² case of the UN Human Rights Committee (CCPR), the first case of claiming for environment based refugee status, could show potential for the applicability of the non-refoulement principle to climate refugees in cases of state's inaction to prevent climate change.¹⁴³ It is significant to note that if the adverse effects of climate change in fact puts the climate refugee's human rights in severe danger, and the conditions in the home state impose a real risk to the life of the climate refugee, the non-refoulement principle could apply. Alternatively, the principle could at least guide the interpretation of a state's responsibility to safeguard human rights of the climate refugees even when they are not located in their home states.

4.1.3 The Right to a Healthy Environment

The threat of climate change to humans have impacted in how the relationship between the condition of environment and human rights is seen. In July 2022, the United Nations Assembly passed a historical Resolution concerning the right to a clean, healthy and sustainable environment¹⁴⁴, in which the UN recognizes the impact of climate change among other environmental factors¹⁴⁵ as being able to interfere with the enjoyment of the environment, while also having negative impacts to the enjoyment of all human rights.¹⁴⁶ In the resolution, the UN acknowledged how the consequences of climate change are most felt by women, girls and other persons in

¹³⁹ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 4th November 1950

¹⁴⁰ European Union, Charter of Fundamental Rights of the European Union, 2012/C 326/02, 26th October 2012

¹⁴¹ See European Commission, "New EMN inform explores displacement and migration related disasters, climate change and environmental degradation" 8th May 2023. Accessed from https://home-affairs.ec.europa.eu/news/new-emn-inform-explores-displacement-and-migration-related-disasters-climate-change-and-2023-05-08_en. Date used 3rd April 2024.

¹⁴² See Chapter 4.5.

¹⁴³ European Migration Network 2023, p. 6

¹⁴⁴ United Nations General Assembly 2022

¹⁴⁵ The UN lists the climate change, the unsustainable management and use of natural resources, the pollution of air, land and water, the unsound management of chemicals and waste, the resulting loss of biodiversity and the decline in services provided by ecosystems as the factors able to interfere to the enjoyment of human rights. See United Nations General Assembly 2022, p. 2

¹⁴⁶ United Nations General Assembly 2022, p. 2

especially vulnerable situations like indigenous peoples, children, the elderly, and disabled people.¹⁴⁷ Moreover, the resolution pointed out the right of people to have an effective remedy as part of the protection of a clean, healthy, and sustainable environment and highlighted the obligation of states to respect, protect, and promote human rights, also by the way of taking actions to address environmental challenges and while protecting the human rights of all, take measures for those particularly vulnerable to environmental degradation.¹⁴⁸

From the perspective of climate refugees, this resolution of the right to a healthy environment and its recognition enables a climate refugee to use the status of the environment in their habitat as a base for claiming refugee status. Furthermore, the action or inaction of a state can be claimed to have affected their situation, if a violation of the right to a healthy environment is seen to be a result of a state's policies. While the resolution imposes further obligations on states to protect "their" people from and prevent the consequences of, climate change¹⁴⁹, it can be seen as setting an important guiding principle to take into account the status of the environment in the evaluation of the fulfillment of a person's human rights and in the analysis of the need for protection mechanisms. Furthermore, referring to access to justice and an effective remedy is important from the view of climate refugees, since the ones who are forced to leave their home states in the face of the adverse effects of climate change might not have the possibility to claim the protection of their rights procedurally by the home state government, and as seen before, climate refugees are usually already in a very vulnerable position by societal factors. This again hardens their access to appropriate remedies. The inaction or incapability of a state to bring relief for its citizens in the situation of environmental degradation that leads to forced displacement can result in the developing countries of the lack of financial resources and of poor government.¹⁵⁰ Especially in these cases, the vulnerability of the individuals to the adverse effects of climate change is highlighted and requires to be

¹⁴⁷ United Nations General Assembly 2022, p. 2

¹⁴⁸ *Ibid.*, p. 3

¹⁴⁹ See United Nations Environmental Programme 28th July 2022. Accessed from: <https://www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right>. Date used 6th April 2024.

¹⁵⁰ The vast majority of the world's forcibly displaced persons are located in developing countries, comprising 85 percent of the total 79.5 million forcibly displaced worldwide in 2019. Furthermore, least developed countries, despite contributing only 1.2 percent to global GDP, accommodate 27 percent of the forcibly displaced persons. See Blair et al. 2021, p. 7.

taken into account in assessing whether a person could be granted protection for being displaced due to climate change.

4.1.4 Temporary Protection

A form of protective measure for persons who do not fill the 1951 Refugee Convention's definition of a refugee, but who are seen to be in severe danger of their human rights under certain circumstances, could be temporary protection.¹⁵¹ Temporary protection is not yet an international mechanism nor is it codified in the 1951 Convention. Temporary protection is a mechanism for States to include in their national migration laws. In the EU, temporary protection is precisely expressed in the Temporary Protection Directive (2001/55/EC), according to which "temporary protection means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular, if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection".¹⁵² This has been recognized as an alternative mechanism for handling climate refugees.¹⁵³ Especially in the literature concerning the EU and the growing issue of climate change displacement, the theme of temporary protection emerges.

As an interesting example, at the national level, the possibility to apply for temporary protection in the context of environmental events has even been codified in the Finnish Alien's Act. According to Section 109 of the Act, temporary protection can be given "to aliens who need international protection and who cannot return safely to their home country or country of permanent residence, because there has been a massive displacement of people in the country or its neighboring areas as a result of an armed conflict, some other violent situation or an *environmental disaster* [emphasis added]".¹⁵⁴ Temporary protection would apply to persons facing adverse harm to their fundamental human rights.

¹⁵¹ Temporary protection has not been specifically referred to in the 1951 Refugee Convention. However, the practicing of non-refoulement principle can work similarly to the temporary protection scheme.

¹⁵² European Union, Directive 2001/55/EC, Article 2(a)

¹⁵³ Picchi 2016, p. 580

¹⁵⁴ Aliens Act 301/2004, Section 109

However, according to Section 109, the meaning of the protection is to only be of short duration, and in maximum of three years.¹⁵⁵ As we have already found out, climate-related displacement in the case of climate refugees is mostly long-term if not permanent, and therefore the current temporary protection clause does not in this sense serve the needs of climate refugees. Also, mechanisms and forms of temporary protection have been criticized for the possible incapability of addressing as large masses of migration as climate refugees would constitute.¹⁵⁶ Still, the regime can be considered as an example of how the possible protection regime for climate refugees could be justified and formed, and temporary protection could also be in certain cases broadened to cover cases of longer-term protection needs.

4.2 Case Law

4.2.1 Teitiota v. New Zealand

“Historic UN Human Rights case opens door to climate change asylum claims” headlined the website of the UN High Commissioner in January 2020, after the first major decision of the Human Rights Committee concerning climate refugees.¹⁵⁷ Even with only the wording of the title, by mentioning climate change asylum as a concept, the UN shed light on future possibilities for climate refugees.

When speaking of recognizing the rights of climate refugees, more often than not, the case of *Teitiota v. New Zealand* (Teitiota case) pops into the discussion.¹⁵⁸ Before submitting the case to the CCPR, Teitiota had sought justice from the New Zealand national courts with no success. The legal process in New Zealand took several years, involving multiple court proceedings and going through all the court instances. The case of the CCPR, as a groundbreaking case concerning a claim to refugee status on the base of the adverse effects of climate change, has been referred to widely in the literature concerning climate refugees and forced climate migration. The case concerned the applicant Ioane Teitiota and his wife, as well as their three New Zealand-born children, all Kiribati citizens, which is a small island state in the Pacific. The applicant and his wife claimed asylum in New Zealand after the rise of the sea

¹⁵⁵ *Ibid.*, Section 109

¹⁵⁶ Picchi 2016, p. 580

¹⁵⁷ Verdu Baeza 2023, p. 17. The full post of the UN Commissioner can be accessed here: <https://www.ohchr.org/en/press-releases/2020/01/historic-un-human-rights-case-opens-door-climate-change-asylum-claims>. Date used 4th April 2024.

¹⁵⁸ *Ioane Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC), 7th January 2020.

level had made their life unbearable in their home. According to the communication Teitiota submitted to the Committee, the situation in the home area of the applicant had become unstable, the fresh water had become scarce due to saltwater contamination and overcrowding, and the inhabitable land had eroded leading to a housing crisis that had caused numerous fatalities.¹⁵⁹ The applicant argued that Kiribati had become an “untenable and violent environment” for him and his family, including his underaged children.¹⁶⁰ While efforts had been made by the Kiribati government to protect the land from the rise of sea level, as according to the 2007 National Adaptation Programme of Action filed by Kiribati under the UNFCCC¹⁶¹, the applicant argued that the state of Kiribati had failed to properly set preventative mechanisms to confront the adverse effects of climate change.¹⁶² The New Zealand Tribunal noted the applicant’s acknowledgement that his and his family’s experiences were common to the people who lived in Kiribati, and admitted that he believed the Government of Kiribati was powerless to stop the rising of the sea level meanwhile internal relocation was not an option.¹⁶³

The ruling by the CCPR has been called a “possible gamechanger” in the field of climate refugee studies¹⁶⁴ where the CCPR evaluated the possible human rights violations, if the family was to be sent back to their state of origin. The main focus in the case was on the right to life, as promised under Article 6 ICCPR.¹⁶⁵ While the Committee did not find ground for the right to asylum for Teitiota and his family, it did recognized possible that the effects of climate change can expose individuals to a violation of their human rights.¹⁶⁶ The resolution in the Teitiota case creates pathway for evaluating climate refugees in climate change cases¹⁶⁷, and strengthens the view of applying human rights law to climate refugees, thereby establishing them protection rights and at least some sort of status under international law.

In its decision, the CCPR recalled that “environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious

¹⁵⁹ UN Human Rights Committee, *Ioane Teitiota v. New Zealand*, 7th January 2020, para. 2.1.

¹⁶⁰ *Ibid.*, para. 2.1.

¹⁶¹ The whole National Adaptation Programme of Action (NAPA) for the Republic of Kiribati can be accessed here: <https://unfccc.int/resource/docs/napa/kiro1.pdf>. Date used 4th April 2024

¹⁶² UN Human Rights Committee, *Ioane Teitiota v. New Zealand*, 7th January 2020, para. 2.3.

¹⁶³ *Ibid.*, para. 2.5.

¹⁶⁴ Hatano 2021, p. 34

¹⁶⁵ *Ibid.*, p. 34

¹⁶⁶ *Ibid.*, p.35

¹⁶⁷ Kahl 2022, p. 169

threats to the ability of present and future generations to enjoy the right to life”.¹⁶⁸ Moreover, the CCPR recognized that New Zealand had examined Teitiota’s claim under the 1951 Refugee Convention, and that the effects of climate change or natural disasters *could* establish a case of protection under the Convention.¹⁶⁹ In evaluating the claim for protection under refugee status, the New Zealand tribunal applied the following test: a) has the claimant been in any land disputes in the past, or faced a real chance of being physically harmed in such a dispute in the future; b) would the claimant be unable to find land to provide accommodation for himself and his family; c) would the claimant be unable to grow food or access potable water; d) would the claimant face life-threatening environmental conditions; e) was the claimant’s situation materially different from that of every other resident of Kiribati; and f) had the Government of Kiribati failed to take programmatic steps to provide for the basic necessities of life, in order to meet its positive obligation to fulfil the claimant’s right to life.

While evaluating the real risk of harm, the CCPR furthermore noted that the risk of harm was not individual for the applicant but common to all in Kiribati, and evaluated the possibility of harm caused by non-state actors in cases of violence originating from land disputes.¹⁷⁰ Overall, the committee concluded in many parts, for instance concerning access to fresh water and losing the means of subsistence, that the applicant had not proven impossibility nor enough information of lack of assistance from the state.¹⁷¹

Both slow-onset and sudden-onset weather events were recognized in the applicant’s case.¹⁷² The CCPR concluded, that it is “of the view 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.”¹⁷³ The fact that sea level rise would render Kiribati inhabitable within the next 10-15 years was not a ground for a claim of the right to life because the CCPR saw that there was a possibility of interference of the Kiribati government by preventative actions, for

¹⁶⁸ UN Human Rights Committee, *Ioane Teitiota v. New Zealand*, 7th January 2020, para. 9.4.

¹⁶⁹ *Ibid.*, para. 9.6.

¹⁷⁰ *Ibid.*, para. 9.7.

¹⁷¹ *Ibid.*, para. 9.8.-9.9.

¹⁷² *Ibid.*, para. 9.10.

¹⁷³ *Ibid.*, para. 9.11.

instance by relocating its citizens.¹⁷⁴ The threshold for an infringement of the right to life was clearly set respectively high.

While the CCPR did not in the end find a violation of the right to life in deporting Teitiota back to Kiribati from New Zealand, two dissenting opinions of CCPR members did note a case of violation.¹⁷⁵ The first dissenting opinion questioned the burden of proof that was set to the applicant, and that despite there was record of children dying in Kiribati due to the poor quality of drinking water, Teitiota and his family were deported even though they had health issues.¹⁷⁶ Furthermore, the CCPR member argued that the ICCPR should protect a *dignified* life, not mere staying alive, which was the case of Teitiota and his family upon returning back to Kiribati.¹⁷⁷ The second dissenting opinion saw that Kiribati had not properly assessed that Teitiota and his children has access to safe drinking water in Kiribati, which would have been Kiribati's burden to prove.¹⁷⁸ By their ways, both dissenting CCPR members referred to the unfair burden of proof of the applicant.

While the Teitiota case brought attention to the possibility of asylum cases related to human rights violations stemming from the adverse effects of climate change, at the same time the decision did set up a far-reaching threshold for applicants to meet in relation to providing proof of the threats to their right to life.¹⁷⁹ The case left behind the question of whether a climate event can cause a real risk for the right to life, or does the real risk occur only after the risk has executed and a person has already passed, and could t the 1951 Refugee Convention be applicable in even more severe cases of adverse effects of climate change than the situation of Teitiota. Furthermore, the Teitiota case can be seen as questioning the role of the positive obligations of States in protecting climate refugees and climate migrants¹⁸⁰, and the case indeed evaluated a lot of the actions taken by Kiribati and their impact to the applicant's case. For a climate asylum case to be successful under the ICCPR and the notion of right to life, the case shows that the risk to life should be more imminent and individual, and it should be proved that the state has not taken adequate preventative

¹⁷⁴ *Ibid.*, para. 9.12.

¹⁷⁵ *Ibid.*, Annex I and II.

¹⁷⁶ *Ibid.*, Annex I.

¹⁷⁷ *Ibid.*, Annex I.

¹⁷⁸ *Ibid.*, Annex II

¹⁷⁹ Papadakos 2023, p. 362-363

¹⁸⁰ Rose 2021, p. 62

or protective measures. Later, the ruling in Teitiota case has been noted to raise questions of the possible reconceptualization of the non-refoulement principle to concern the cases that crosses the high threshold of real risk set by CCPR.¹⁸¹

4.2.2 Torres Islanders v. Australia

In another earlier case from the CCPR, the *Torres Islanders v. Australia*, eight applicants from an indigenous minority group of the Torres Strait Islands raised a claim against Australia.¹⁸² The Torres Strait Islands as low-lying islands are among the areas severely affected by sea-level rise. The Torres Islanders argued that the inadequate response of Australia to climate change and its insufficient efforts to mitigate emissions has violated the applicants' rights under the ICCPR.¹⁸³ The applicant argued that Australia had for instance violated their right to life due to the failure to prevent the foreseeable loss of life from climate change impacts, thus failing to protect the applicants' life with dignity.¹⁸⁴ The applicants also invoked the obligations of Australia under the Paris Agreement.¹⁸⁵

While the CCPR recognized, that the right to life can be violated if a State fails to protect one's life from threats, such as the adverse effects of climate change, in the applicants' case it considered that the applicants had not indicated to presently face the adverse impacts of climate change with a real and reasonable risk of physical endangerment, and that the claims under Article 6 of ICCPR "related mainly to their ability to maintain their culture".¹⁸⁶ Furthermore, the CCPR could not, with the information provided to it by Australia, assess that the measures taken by Australia to adapt to the effects of climate change would have been insufficient.¹⁸⁷

Additionally, the CCPR studied the applicants' claims of violations concerning their private, family, and home life under Article 17 of ICCPR in the future scenario of them losing their homes due to the submerging of their home islands.¹⁸⁸

¹⁸¹ Verdu Baeza 2023, p. 19

¹⁸² *Daniel Billy et al v. Australia*, CCPR/C/135/D/3624/2019, UN Human Rights Committee (HRC), 22nd September 2022.

¹⁸³ *Ibid.*, para. 2.1.-3.1.

¹⁸⁴ *Ibid.*, para. 3.4.

¹⁸⁵ The Paris Agreement is a legally binding treaty on climate change. The Paris Agreement is analyzed more closely in Chapter 5.1.; UN Human Rights Committee, *Daniel Billy et al v. Australia*, CCPR/C/135/D/3624/2019, UN Human Rights Committee, 22nd September 2022, para. 3.4.

¹⁸⁶ *Daniel Billy et al v. Australia*, CCPR/C/135/D/3624/2019, UN Human Rights Committee, 22nd September 2022, para. 8.3.-8.6.

¹⁸⁷ *Ibid.*, para. 8.7.

¹⁸⁸ *Ibid.*, para. 8.9.

Interestingly, the CCPR concluded that Australia had failed in its positive obligation to implement such adaptation measures that would protect the applicants' home, private life, and family, thereby violating the Article.¹⁸⁹ As to the part of belonging to an indigenous group, the applicants had also invoked Article 27 of ICCPR of the right to enjoy their culture. Again, the CCPR found that Australia's failure to adopt timely and adequate adaptation measures to "protect the authors' collective ability to maintain their traditional way of life, to transmit to their children and future generations their culture and traditions and use of land and sea resources discloses a violation of the State party's positive obligation to protect the authors' right to enjoy their minority culture".¹⁹⁰ Whereas the CCPR did not find a breach of Article 6 right to life, again there were dissenting opinions that found it violated, indicating the complexity of assessing the Article.¹⁹¹

While in this case, the stakes were not to grant the applicants an asylum or a residence permit, the case still presents an important aspect of the significance of human rights in the context of climate change. The fact that the decision of the CCPR proposed Australia provide adequate compensation for the applicants for its omission to protect them from the adverse impacts of climate change can enable extending the claims of state responsibility in migration-related questions, at least in the cases of forced displacement and climate refugees.

4.2.3 European States Shedding Light to Alternative Forms of Protection

In Europe, there have been cases in the national courts where the impact of climate on human rights has been considered when studying the repatriation of an applicant to their home state and the applicability of the non-refoulement principle. In Germany, the German Higher Administrative Court applied the non-refoulement principle of Article 3 of the European Charter on Human Rights to an Afghan national, thus setting a ban on deportation, based on the worsened conditions in Afghanistan during the Covid-19 pandemic.¹⁹² Interestingly, while assessing the humanitarian conditions in Afghanistan, the Court mentioned the "environmental

¹⁸⁹ *Ibid.*, para. 8.12.

¹⁹⁰ *Ibid.*, para. 8.14.

¹⁹¹ *Ibid.*, Annex I, Annex III and Annex V

¹⁹² Verwaltungsgerichtshof Baden-Württemberg 11. Senat, A 11 S 2042/20, 17th December 2020. See also Camilla Schloss, 'Climate migrants – How German courts take the environment into account when considering non-refoulement', 3.3.2021. Accessed from <https://voelkerrechtsblog.org/climate-migrants/>. Date used 12th April 2024.

conditions such as climate and natural disasters” as an assessment criteria of inhuman or degrading treatment.¹⁹³ Thus, climate and natural disasters can, according to the Court, affect the assessment of whether a migrant can be repatriated to their home state, and environmental conditions must be included in the evaluation of the humanitarian situation of the home state and the real possibility to repatriate.

In Italy, national protection systems have been used to handle environmental migration.¹⁹⁴ According to a case study, Italian courts have established the possibility for humanitarian protection in the case of the fear of an effective deprivation of human rights in the applicant’s home state, and vulnerability to that can consist inter alia of the exposure to natural or environmental disasters, land grabbing, or the general environmental and climatic conditions in the home state.¹⁹⁵ As an example, the Italian Court of Cassation has in 2020 handled a case of a Bangladeshi citizen, who appealed his international protection claim because the applicant considered the disastrous environmental situation of his home country was not adequately considered.¹⁹⁶ The Court noted that the destruction of the applicant’s home could affect his vulnerability, but only if it was accompanied by evidence of his primary human rights being violated, which would pose him with a risk of living conditions that would not meet the criteria of a dignified life, and that natural disasters can, in certain circumstances, be a compelling reason for a person to leave their state of origin.¹⁹⁷ Later, in 2021, the same Court concluded in a case concerning an international protection seeker from the Niger Delta, that environmental degradation, climate change, and unsuitable development could hinder the enjoyment of the right to life and the right to existence with dignity.¹⁹⁸ The Court furthermore set a threshold of “the ineliminable core constituting the base of

¹⁹³ *Ibid.*, para 30.

¹⁹⁴ Scissa 2022, p. 8

¹⁹⁵ *Ibid.*, p. 17

¹⁹⁶ *Ibid.*, p. 21 referring the case Court of Cassation, I Civil Section, 4th February 2020, n 2563.

¹⁹⁷ *Ibid.*, p. 21

¹⁹⁸ *Ibid.*, p. 22 referring the case Court of Cassation, II Civil Section, 24th February 2021, n 5022; UCLouvain, Court of cassation (ITALY), II Civil Chamber sent. 12 November 2020 – 24 February 2021, no 5022, 29th April 2021. Accessed from <https://uclouvain.be/fr/instituts-recherche/juri/cedie/actualites/court-of-cassation-italy-ii-civil-chamber-sent-12-november-2020-%26ndash%3B-24-february-2021-no-5022.html>. Date used 13th April 2024.

personal dignity” below which the right to life and decent living conditions cannot be seen as guaranteed.¹⁹⁹

While the above are only a few examples of how climate-related protection claims have been raised and handled in European countries, the case law presents first the rise of climate-related claims, and secondly, the high threshold that is currently applied in assessing when the adverse effects of climate change violate fundamental human rights. Similarly to the Teitiota case, the tribunals in these examples recognized the possibility for climate change effects to establish such a level of hardship in the applicant’s situation, that the conditions in the applicant’s home country can violate human rights when considering the individual conditions of the applicant. In the view of climate refugees, this can be seen as a positive development, as at least it is possible to invoke human rights protection from the adverse effects of climate change in national and international tribunals.

4.3 Chapter Summary

The impact of climate change and its threat to the fundamental human rights of the persons displaced due to the adverse effects of climate change has been noted in the international community. It has been stated that when people’s human rights are in danger, they should be provided international protection even if they are not “classical” political refugees but climate refugees.²⁰⁰ Human rights should be interpreted widely to establish protection to climate refugees through them.²⁰¹ In literature, human rights law has been usually analyzed together with the applicability of the 1951 Refugee Convention. Nevertheless, some scholars have pointed out how the human rights law regime could provide relief to the issue of climate refugees in the future. Human rights instruments such as the ICCPR hold great potential for climate change and migration-related questions²⁰², and it seems like in the dilemma of climate refugees, human rights law application is a promising way to establish protection, at least according to the available case law.

¹⁹⁹ Scissa 2022, p. 22 referring the case Court of Cassation, II Civil Section, 24th February 2021, n 5022; UCLouvain, Court of cassation (ITALY), II Civil Chamber sent. 12 November 2020 – 24 February 2021, no 5022, 29th April 2021. Accessed from <https://uclouvain.be/fr/instituts-recherche/juri/cedie/actualites/court-of-cassation-italy-ii-civil-chamber-sent-12-november-2020-%26ndash%3B-24-february-2021-no-5022.html>. Date used 13th April 2024.

²⁰⁰ Rosingoli 2023, p. 4

²⁰¹ Hatano 2021, p. 44

²⁰² *Ibid.*

The case law has shown that human rights law instruments can and will be used for the protection of climate refugees according to the new interpretations of the HRC and other judicial bodies.²⁰³ The role of courts in guiding the interpretation of international law can be seen as a very effective way to provide protection for climate refugees now, when there are no common or recognized policies. By applying human rights law, climate refugees can be imposed protection mechanisms even without a legal definition. Like the case of Teitiota proved, it is possible to interpret the right to life with dignity so that providing protection to climate refugees in the most adverse situations is possible, at least in theory, when the requirements implied by the CCPR are fulfilled.

The Teitiota case raises questions of how far the environmental degradation and its consequences to human life must go in order for the conditions to be recognized as violating human rights. In evaluating persecution under the 1951 Refugee Convention, the mere fear of persecution enables refugee status, and the real risk test applies. It could be necessary to apply the real risk test in the cases of adverse effects of climate change and the threat to human rights, so that the applicant would not need to lose their life in order to appeal to an infringement.

²⁰³ *Ibid.*, p. 44

5 Environmental Law and Climate-Related Forced Displacement

The global crisis of climate change has led to policies and regulations that are codified in international law instruments. Examples of the key instruments are the United Nations Framework Convention on Climate Change (UNFCCC)²⁰⁴ adopted in 1992, and protocols related to it such as the Kyoto Protocol²⁰⁵ adopted in 1997, and the Paris Agreement²⁰⁶ adopted in 2015. Since this thesis has so far explored the possibilities of climate refugees under international refugee law and the international human rights law instruments, it is meaningful to navigate the possibilities under international environmental law as well.

5.1 Climate Refugees and Environmental Law

The objective of the UNFCCC is to stabilize the greenhouse gas concentrations in the atmosphere at a level that would avert harmful human-induced disruptions to the climate system.²⁰⁷ The UNFCCC sets states important obligations concerning the Convention goals. Namely, while committing States to stabilize their greenhouse gas concentrations, the state parties are obliged to develop and update their national plans on mitigating greenhouse gas emissions, implement measures to adapt to the climate change impact, cooperate in the field of environmentally friendly technologies and to report their emissions and efforts to fulfill the Conventions commitments, among other things. Further, the Kyoto Protocol to the UNFCCC sets as its main objectives the limiting and reducing of greenhouse gas emissions.²⁰⁸ The Protocol's emission reduction goals concern the developed states and countries that are in economic transition and thereby take into account the emissions, wealth, and capacity²⁰⁹ of the states in its commitments. Despite setting important implications for hindering climate change, the UNFCCC and the Kyoto Protocol do not specifically

²⁰⁴ United Nations General Assembly, United Nations Framework Convention on Climate Change, A/RES/48/189, 20th January 1994

²⁰⁵ Kyoto Protocol to the United Nations Framework Convention on Climate Change, 11th December 1997

²⁰⁶ Paris Agreement to the United Nations Framework Convention on Climate Change, 12th December 2015.

²⁰⁷ United Nations General Assembly, United Nations Framework Convention on Climate Change, 20th January 1994

²⁰⁸ See e.g. United Nations Climate Change, What is Kyoto Protocol? Accessible from https://unfccc.int/kyoto_protocol. Date used 17th April 2024.

²⁰⁹ Kim et al. 2020, p. 2

take into consideration in their language neither the climate change induced migration nor its implications to social aspects or human rights.²¹⁰

Finally in 2015, the Paris Agreement was adopted, reacting to the impact of climate change on human mobility and displacement. In its preamble the Agreement mentions to recognize the "specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change"²¹¹ as well as to acknowledge that as "climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity"²¹². The particularly vulnerable states are mentioned for instance in the preamble of the UNFCCC, which mentions in example low-lying and other small island states, states that have low-lying coast lines and semi-dry areas or areas that are liable to floods, drought or desertification.²¹³ The Agreement's preamble paragraph by taking action to address climate change has been remarked as revolutionary as to its unique nature in a climate treaty²¹⁴ in first of all in using the term "should" and thus being alike to a substantive norm, and furthermore because the paragraph implies that the parties who negotiated the treaty wanted the paragraph to guide the interpretation and implementation of the whole Agreement²¹⁵ through a lens of human rights. It has besides been stated that by setting such a guiding paragraph, the Agreement notes other international law obligations and incorporates human rights to the Agreement.²¹⁶ While acknowledging the major impacts the adverse effects of climate change can have to communities, and for instance their impact to forced displacement, this interpretative approach including human rights perspectives is significant for climate refugees, because the Agreement

²¹⁰ Jaswal – Jolly 2013, p. 51

²¹¹ Paris Agreement to the United Nations Framework Convention on Climate Change, 12th December 2015, paragraph 5

²¹² *Ibid.*, paragraph 11

²¹³ Carazo 2017, p. 111; United Nations General Assembly, United Nations Framework Convention on Climate Change, A/RES/48/189, 20th January 1994

²¹⁴ *Ibid.*, p. 114

²¹⁵ *Ibid.*, p. 114-115

²¹⁶ *Ibid.*, p. 115

obliges states to act in the fight against climate change while safeguarding the fundamental rights of humans have to be kept along.

The Conference of Parties (COP) in which the Paris Agreement was drafted also established a Task Force on Displacement, which aims to develop recommendations for addressing climate change-related displacement in various ways.²¹⁷ In practice, the task force is for instance at the moment cooperating with the UN Network on Migration and training UNFCCC negotiators and stakeholders to adopt a common understanding of measures taken for averting, decreasing and facing climate change-related displacement.²¹⁸

Further, the task of managing displacement was delegated to the Warsaw International Mechanism (WIM) for Loss and Damage, which was established under the UNFCCC to address the issue of loss and damage as well as to enhance understanding, coordination, and support for the communities affected by the effects of climate change. The theme of loss and damage is relevant from the point of view of climate refugees. In the context of international environmental law loss and damage refer commonly to the adverse effects of climate change. Article 8 paragraph 1 of the Paris Agreement states, concerning loss and damage, that “Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage”. It has been stated that an important question with the loss and damage is climate-related displacement.²¹⁹ While other areas of climate change law usually either aim to mitigate the effects of climate change or adapt preventative measures, loss and damage as an area of climate change law purposes to cope with the damage that has already occurred.²²⁰ Even though climate refugees are not defined under loss and damage rules, climate refugees could fit well under its regime, and it has been stated that regulating climate refugees could be possible under the WIM for Loss and Damage and the UNFCCC.²²¹ Additionally, for the proper achievement of the goals of

²¹⁷ UNFCCC, Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015, 29th January 2016.

²¹⁸ UNFCCC, Third rolling plan of action of the task force on displacement for 2022–2024, FCCC/SB/2022/2/Add. Accessed from https://unfccc.int/sites/default/files/resource/Third_rolling_PoA_TFD_%202022.pdf.

²¹⁹ Dupuy – Viñuales 2018, p. 192

²²⁰ *Ibid.*, p. 191-192

²²¹ Hariharan 2020, p. 36-38

the Paris Agreement, protection for climate refugees has been seen as inevitable.²²² Environmental law sets states many different obligations, and there is potential to find linkages between the obligations to and the protection of climate refugees.

5.2 State Responsibility for the Effects of Climate Change

The Paris Agreement can be seen currently as one of the most important sources of state responsibilities concerning mitigating and preventing climate change, and while most states in the international community have signed and ratified the Agreement²²³, the requirements set by the Agreement can be said to largely impact the whole world. What is important from the point of view of climate refugees, the Paris Agreement takes into account the special vulnerability of the developing states in the context of adverse impacts of climate change.²²⁴ Whilst the prevention of further climate change influences how adverse the effects of climate change end up being, concentrating also on measures that help the developing states to cope with changing environment and living conditions at this moment is a route to also prevent climate-induced migration. This can be done through environmental law agreements.

The efforts of states, especially the developed states, are under scrutiny in the international community today. Especially concerning the concern of climate change's effects on human rights and the right to a healthy environment that was declared by the UN 225, it seems that states have fewer possibilities to avoid their responsibilities in addressing climate change, at least without facing the consequences. This was already demonstrated in the cases of *Teitiota* and *Torres Islanders*, where the CCPR examined the actions taken by the home state in assessing possible infringements of human rights.

As a case law example of state responsibility for climate change's effects, at the beginning of February 2024, the European Court of Human Rights issued a groundbreaking judgment concerning the violation of human rights, where it saw that Switzerland had not implemented sufficient measures to combat climate change,

²²² Hariharan 2020, p. 38

²²³ The Paris Agreement has been signed by 195 parties. For instance, Nicaragua and Syria have signed but not ratified the Paris Agreement and Iran, Libya and Yemen have ratified but not signed the Paris Agreement. See more on e.g. United Nations Climate Change, accessible at <https://unfccc.int/process/the-paris-agreement/status-of-ratification>. Date used 23rd April 2024.

²²⁴ Reins – van Calster 2021, p. 3. See also Paris Agreement to the United Nations Framework Convention on Climate Change, 12th December 2015, Article 7.

leading to violating the applicants right to private and family life.²²⁵ The European Court of Human Rights concluded that Switzerland had not put in place a relevant domestic regulatory framework for limiting national greenhouse gas emissions and that Switzerland had previously failed to meet the past greenhouse gas emission targets that had been set for it, thereby failing its positive obligations concerning the climate change prevention and what has been obliged under international environmental law.²²⁶ Thus, the non-obliging of the rules of environmental agreements can also lead to infringing human rights. This could also be seen as applied to claims from climate refugees.

Additionally, one base for climate responsibility claims, that could also benefit climate refugees, is the principle of common but differentiated responsibilities (CBDR). The principle was established in 1992 at the first Earth Summit of Rio de Janeiro, and it is written in Article 3(1) of the UNFCCC which states 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”.²²⁷ The principle provides a possibility to navigate between the possibilities and responsibilities of the developed and developing states and recognizes the disproportionate impact that climate change has globally.²²⁸ The CBDR reflects an approach to climate change that takes into account the morality of climate responsibility, as does the Kyoto Protocol where it divides responsibilities on the base of a state’s development. While CBDR was initially established for financial relief, it has been argued to establish a ground for the responsibility to intake climate-induced displaced persons when applied together with the principle of non-refoulment.²²⁹ However, even without extending CBDR to this scope, it could provide a base for financial assistance for the developing states to handle climate refugees.²³⁰

²²⁵ European Court of Human Rights Grand Chamber, Case of Verein Klimaseniorinnen Schweiz and others v. Switzerland, 9th April 2024.

²²⁶ *Ibid.*, para. 571-573.

²²⁷ United Nations General Assembly, United Nations Framework Convention on Climate Change, A/RES/48/189, 20th January 1994, Article 3

²²⁸ Hutcheson 2020, p. 127

²²⁹ Khanam – Tahmid 2022, p. 161

²³⁰ Kuusipalo 2017, p. 637

5.2.1 The Rich and the Poor Paradox

When discussing about climate change and its effects, and the countries and areas most vulnerable to the adverse effects of climate change, it is impossible to ignore the fact that anthropogenic climate change is largely impacted by the industrialization of the developed states. This creates an interesting point of view to the discussion of responsibility and relief mechanisms to climate change, the rich and poor paradox. In this paradox, the relationship between the emissions of developed states and the impact on developing states is weighed. In addition, the issue can be looked from the point of view of the relief mechanisms that have been established, and their possible unequal impact in the results to the economies of rich and poor countries.²³¹

By recognizing how the emissions of the developed States has affected negatively to the situation of developing countries and has impacted to climate-induced migration, it is possible to find justification for the establishment of policies for climate migrants and climate refugees.²³² In literature, it has been pointed out, that the unfair burden of climate change effects on the most vulnerable States could work as the basis for a normative approach due to the responsibility of the developed states for climate change.²³³ Addressing the unequal burden of climate change effects has been suggested to be addressed as easily as by making easements for immigration restrictions.²³⁴ Furthermore, an option would be to establish climate governance systems that would operate the distribution of environmentally displaced persons, either migrants or climate refugees²³⁵, thereby enforcing the ideas of responsibility sharing of the effects of climate change.

McAdam has also argued that in countries where adaptation measures are put in place because these communities have the resources to do so, there is less need for disaster risk reduction and management policies, and can also be less need to move permanently elsewhere in the face of disasters.²³⁶ If we again compare the possibilities of developed and developing states in the face of adapting measures to prepare for the adverse impacts of climate change, there is a clear disadvantage for

²³¹ Allafta – Opp 2024, p. 10-11

²³² Nawrotzki 2014, p. 82

²³³ Castles, 2010, p. 245

²³⁴ Nawrotzki 2014, p. 82

²³⁵ *Ibid.*, p. 82

²³⁶ McAdam 2012, p. 21

the countries that lack financial resources. This leads more probably to displacement, and if there are no possibilities to relocate within the home state, transnational displacement might be the only option.

However, it is not simple to establish who has the legal liability for climate change, despite current knowledge of the history of industrialization.²³⁷ Even though the historical emissions of the rich industrialized states could be shown to have caused anthropogenic climate change, the emissions have been lawful during their exposure, which causes difficulty in claiming legal liability for the historical emissions.²³⁸ In addition, it is hard to demonstrate that a certain environmentally harmful act has specifically amounted to causing climate change. A breach of international environmental law should be attributable to a specific impact of climate change, preferably a certain disaster or for instance the displacement of people, so that there could be claimed state responsibility due to pollution.²³⁹

The responsibility for certain climate effects would need heavy evidence of being caused by a single state and a certain action for a legal case to succeed. In addition, usually, the polluter has been a private entity, and not the state itself, even though the state would be responsible for setting regulatory limits for the emissions. This, as McAdam points out referring to the work of Kälin and Scherpfer, raises the burden of proof very high for the harmed state to show the causation, which makes it particularly difficult to establish²⁴⁰, even “hardly possible”.²⁴¹ From the point of view of developing states, who often are the source of climate refugees, and who or whose residents would probably be the applicants in such a case, the possibilities to claim justice seem uncertain. Deriving responsibility of the developed states from purely environmental law aspect is thus complex, which results in difficulty in basing climate refugee status claims. Yet, if a clear connection between certain emissions to displacement could be found, establishing a status for climate refugees through the obligation of the rich developed States to face their unfair contributions to climate change could be seen as an alternative approach.

²³⁷ *Ibid.*, p. 92

²³⁸ *Ibid.*, p. 92

²³⁹ Kälin – Scherpfer 2011, p. 10

²⁴⁰ McAdam 2012 p. 93-95, Kälin and Schepfer 2011, p. 10

²⁴¹ Kälin – Schepfer 2011, p. 10

5.2.2 The Question of Morality

The points mentioned above concern only the concrete legal liability. When looked ‘out of the box’, there can also be an argument based on moral responsibility to recognize climate refugees and provide them protection mechanisms. The poorest half of the worlds’ population generate only 10 per cent of the global emissions, and the richest 10 per cent of the population generate half of global emissions.²⁴² Furthermore, the wealthiest 1 per cent of the worlds’ population have a carbon footprint that is as much as 2000 times bigger, than the one of the worlds’ poorest 1 per cent.²⁴³ These numbers make it hard to view climate change responsibility and climate justice merely from a technical, legal point of view.

One aspect for climate justice in case of climate refugees is the moral responsibility of the developed states. The question is, could these rich states have a moral responsibility to take in climate refugees, out of fairness. Support for considering morality and justice in climate change responsibility questions can be found from literature.²⁴⁴ The moral responsibility of climate change can also be dated far in human history. Historical responsibility for emissions and thereby for climate change can be derived from colonialism. The IPCC has in its Climate Change 2022 Impact, Adaptation and Vulnerability report’s summary for policymakers stated that in the regions that are highly vulnerable for climatic hazards, the present challenges to develop is influenced by, among others, colonialism.²⁴⁵ According to an analysis²⁴⁶ studying how the colonial rule has affected to climate change responsibility, it has been shown that for instance, the former colonial powers of Europe, like the UK, France and the Netherlands, have significant responsibility for the current global warming.²⁴⁷ Furthermore, the analysis shows that by re-evaluating the historical emissions that have occurred under the colonial rule, the climate responsibility of the colonial powers is not only limited to the emissions in their territory, but also could

²⁴² UN General Assembly 2019, p. 7

²⁴³ *Ibid.*, p. 7

²⁴⁴ See e.g. Uddin 2013; Nawrotzki 2013

²⁴⁵ IPCC 2022, p. 12

²⁴⁶ See CarbonBrief, Revealed: How colonial rule radically shifts historical responsibility for climate change, 26th November 2023. CarbonBrief is a UK-based website, that covers the latest developments in climate science, climate policy and energy policy. CarbonBrief is funded by the European Climate Foundation. Accessed from: <https://www.carbonbrief.org/revealed-how-colonial-rule-radically-shifts-historical-responsibility-for-climate-change/>. Date used 26th April 2024.

²⁴⁷ CarbonBrief 2023

be extended to the exploitation of natural resources in the former colonies.²⁴⁸ By the adverse effects of climate change, which lead to for instance forced displacement, colonial injustices are feared to worsen.²⁴⁹

Furthermore, the emissions of the Global South have not been forgotten in the discussion of emissions reductions concerning climate change. Whereas the developing states have been accused of causing emissions, the nexus between the emissions of developed states and the developing, historically colony states, has even been addressed by differentiating the “survival emissions of the poor” from the “luxury emissions of the rich”.²⁵⁰ By this point of view, it seems that there is no room to criticize the emitting of developing states, and rather see their trials of sustaining themselves as fair. While this does not link directly to the issue of climate refugees, in the discussion of climate change responsibility and the moral view of the Global North to reach out to help the states of the Global South, the example greatly identifies the different situations these countries are in and their realistic possibilities to take part in the actions against climate change.

From the point of indigenous people, they are particularly vulnerable to the effects of climate change as they often live in areas that are sensitive to changing climate such as coastlines, islands, forests, and polar.²⁵¹ Furthermore, the indigenous communities tend to have for instance cultural and spiritual links to the land, and the fact that they are particularly vulnerable to climate change is not random, yet a consequence of colonialization.²⁵² The case of the *Torres Islanders* is an example of the indigenous community’s claims concerning culture, climate justice, and their special vulnerability to climate change and displacement.²⁵³ Also respect for indigenous communities can argue for considering moral responsibility in the case of climate refugees.

However, scholars have argued that while the question of moral responsibility is relevant and worth examining, it is complex to link it with cross-border displacement, because a narrow approach that would for instance establish that polluter states

²⁴⁸ *Ibid.*

²⁴⁹ Reibold 2023, p. 624

²⁵⁰ Dubash 2019, p. 82

²⁵¹ Bookman 2022

²⁵² *Ibid.*

²⁵³ See Chapter 4.2.2.

should intake climate-change displaced persons in proportion to their emissions, sets the broader discussion of the issue to a too strict legal viewpoint, which may make it more difficult to find suitable solutions to the issues at hand.²⁵⁴ So, for the recognizing of climate refugees and examining the responsibility of the polluter states in a moral sense, it ought to be better to establish wider relief mechanisms than merely obliging developed states to take in a certain amount of climate refugees and consider the situation “even”. An alternative way to operate could for instance be adaptation assistance to the source states of climate refugees.

Realistically, purely moral questions will not probably be successful when it comes to taking in climate refugees, since as noted previously in this research, the states in the Global North have seemed reluctant to increase the amount of admitted refugees.

5.3 Possibilities for Climate Refugees under Environmental Law

5.3.1 The Nansen Initiative and the Platform on Disaster Displacement

An example of an international environmental law-related policy concerning displacement caused by the environment is the Nansen Initiative. The Nansen Initiative was established in 2012 by the governments of Switzerland and Norway and aims to cooperate between states to address the protection needs of those who would belong under the definition of a climate refugee.²⁵⁵ By operating as an advising party, the Nansen Initiative is a state-led process that aims to build consensus on a protection agenda addressing the needs of cross-border displaced persons in the context of disasters and the effects of climate change.²⁵⁶

The Nansen Initiative was later replaced by the Platform on Disaster Displacement (PDD), which continued to fulfill the agenda set by the Initiative. According to the PDD, it does not present a need for a new binding international convention on disaster displacement yet sees that the practices of States and regional or subregional actors could be integrated into the protection regime in the specific context of the

²⁵⁴ Kälin – Schrepfer 2011, p. 10

²⁵⁵ The Nansen Initiative 2015, p. 5. The Agenda does not refer to the term “climate refugee” but uses the phrase “persons displaced across borders in the context of disasters, including the adverse effects of climate change”.

²⁵⁶ See e.g. UNHCR, The Nansen Initiative leaflet. Accessed from: <https://www.unhcr.org/media/nansen-initiative-leaflet>. Date used 3rd May 2024.

States.²⁵⁷ Thus, the PDD takes a more individual approach to explicit situations and does not aim to establish a universal result for the issue of climate-related cross-border displacement.

The PDD takes into account views of environmental law, refugee law, and human rights law. The objective of PDD in its agenda for the years 2024 to 2030 is to “support States and other stakeholders to strengthen the protection of persons displaced in the context of disasters and the adverse effects of climate change; as well as to prevent or reduce disaster displacement risks in countries of origin”.²⁵⁸ The strategic priorities of the Initiative are to firstly “enhance the implementation of measures to protect cross-border disaster-displaced persons”, secondly to “enhance the management of the risk of disaster displacement in climate action, disaster risk reduction and sustainable development”, and thirdly to “enhance public policies on planned relocation, as well as on internal disaster displacement and finding durable solutions”.²⁵⁹ The PDD works closely together with the IOM and the UNHCR to establish its goals.²⁶⁰

In practice, according to the Strategy of the PDD it had for 2019-2023, it for instance organizes events and meetings, engages in the conferences of for example UNFCCC, and provides advice and guidelines.²⁶¹ The Nansen Initiative and later PDD have affected concretely on some policies concerning climate-related displacements. In fact, in Albania, Iceland, Croatia, Montenegro, and North Macedonia as well as in the United States, legislation concerning disaster migration has been implemented.²⁶² These cases show that even despite not being a law-enforcing institution, the PDD

²⁵⁷ Platform on Disaster Displacement, The Platform on Disaster Displacement: Towards Better Protection for People Displaced Across Borders in the Context of Disasters and Climate Change. Accessed from <https://disasterdisplacement.org/the-platform/our-response/>. Date used 3rd May 2024; Platform on Disaster Displacement, Platform on Disaster Displacement (PDD) Strategy 2024-2030.

²⁵⁸ *Ibid.*, p. 3

²⁵⁹ *Ibid.*, p. 5.

²⁶⁰ *Ibid.*, p. 9

²⁶¹ Platform on Disaster Displacement, ‘Platform on Disaster Displacement (PDD) Strategy 2019-2023, Annex I: Workplan’. Accessed from: <https://disasterdisplacement.org/wp-content/uploads/2022/07/30062022-Annex-I-PDD-Workplan-2019-2023.pdf>. Date used 20th May 2024.

²⁶² Platform on Disaster Displacement, UNECE Regional Review, Intervention by the PDD Secretariat. Intergovernmental Conference: Session 1, 11th March 2024. Accessed from https://migrationnetwork.un.org/system/files/docs/UNECE%20Regional%20Review_Intervention_PDDSecretariat.pdf. Date used 20th May 2024.

can, with its policies and by cooperation with States, impact in protection mechanisms for people displaced by disasters.

The Nansen Initiative's Agenda and the later PDD have been widely recognized by the international community: the Initiative was accepted by 109 States.²⁶³ What is interesting in the Nansen Initiative and the PDD is that they emphasize the role of regional operators in addressing climate-related displacement. In this approach, for instance local state governments are seen to have a key role in recognizing the needs of displaced as well as suitable practices to handle displacement movement.²⁶⁴ The Nansen Initiative had been found successfully comprised due to its capability to bring timeliness to the issue of climate-related displacement, highlighting the already existing practical solutions and by bringing the issue to local levels.²⁶⁵ Its successor PDD can be used to better prepare states to the displacement movement by building long-term resilience to the zones vulnerable to climate change, thereby keeping the forward-looking agenda by the aim to act in advance²⁶⁶, among other measures.

However, as the Initiative did and the PDD works now only as recommendations on how things could be done and what aspects could be considered, for concrete relief for climate refugees, there remains the need for actual, internationally agreed protection mechanisms.

5.3.2 Responsibility Claims

Moreover, as established in this Chapter, the objectives of the UNFCCC do not straightforwardly mandate states to take in climate refugees or ease climate-induced migration. Climate migration and the status of climate refugees have not been recognized under environmental law more than being noted as a rising issue that should be considered. However, the objectives of environmental law instruments can establish states certain expectations on preventing and hindering climate change, which will secondarily positively affect climate refugees, in the form of a less drastic outcome of global warming.²⁶⁷ Additionally, the objectives of environmental law, if

²⁶³ Platform on Disaster Displacement, Platform on Disaster Displacement (PDD) Strategy 2024-2030, p. 1

²⁶⁴ See e.g. Potter 2017

²⁶⁵ McAdam 2016, p. 1524

²⁶⁶ *Ibid.*, p. 1546

²⁶⁷ If the environmental law actions against climate change are taken, the less adverse effects will occur in the future. The actions taken now and the environmental laws implemented will thus affect the number of climate-change displaced persons.

not fulfilled, could work as the basis for claims of breaching the rights of the people vulnerable to the adverse effects of climate change, among them climate refugees.

While the environmental law sets responsibility claims about mitigation and adaptation of climate change relief mechanisms, climate refugees could also benefit from targeted financial programs. As an example, the World Bank report has suggested that investments in disaster risk reduction can build the resilience of vulnerable states.²⁶⁸ With a better capability to respond to the increasing environmental challenges, climate refugees could be helped by invoking to the root causes of displacement.

Especially by the route of moral responsibility, the claims could succeed. While I find it inevitable that climate refugees will have some form of legal regime to address them in the future, at the latest when the migration movement to developed countries will be so significant that the issue must be controlled, the historical responsibilities could be linked to the refugee intake. By evaluating the question of moral responsibility, the paradox between the rich and the poor, and the historically different contributions to anthropogenic climate change, this view is possible. Responsibility claims by international environmental law agreements can be said to hold hope for climate refugees in the future.

5.4 Chapter Summary

The intersection of environmental law and climate change-related forced displacement shows how complex the legal frameworks for climate change are. While the UNFCCC, the Kyoto Protocol, and the Paris Agreement commit to mitigating GHG emissions and preparing the international community to the impacts of climate change, comprehensive mechanisms for climate-induced migration as well as climate refugees are missing. The most promising framework currently is the Paris Agreement, as it recognizes the role of human rights law in climate change discourse.

International environmental law as an approach to the issue of climate refugees in my opinion provides the possibility to consider claims that are related to the unfair distribution of GHG emissions and thereby the unequal impact of climate change. Also, it gives the possibility to evaluate how States have implemented mitigation and

²⁶⁸ Tanner et al. 2015, p. 9

adaptation mechanisms to tackle climate change, as they have been mandated in the environmental law instruments such as the Paris Agreement.

Due to the impacts of climate change, which are not only environmental but also affecting the social and economic state of countries and the operations of the international community, the response to climate change cannot be implemented in an environmental law vacuum without concerning the other relevant fields of international law. Thereby, the intersection of environmental law and human rights law and the evaluation of state responsibility enables discovering possibilities for mechanisms and claims for climate refugee protection. Furthermore, support for climate refugees in environmental law field can be established from the Nansen Initiative and the PDD, as well as the CBDR, while its implementation would need further research.

Furthermore, in the context of “rich north” and “poor south”, the question arises, do the rich states who have benefitted from the industrialization have a purely moral responsibility to provide help for the most affected states, that have not benefitted from the industrialization that have caused major part of the emissions. However, moral claims support at least forms of financial assistance for the developing states. Thus, even though climate refugees would not be granted a legal status under environmental law nor other international law regimes, their protection can be pursued.

6 Conclusions

Climate refugees pose a significant issue for the international community. The impact of climate change, such as rising sea levels, droughts, increased air pollution, and extreme weather events, affect significantly the living conditions and livelihoods of many areas, leaving the communities in front of the question of migrating. Both the developing and developed states will face the emergence of climate-induced displacement, and mechanisms to handle this are in great need.

The thesis asked the research question “What, if any, is the status of climate refugees in international law, and how the rights of climate refugees could be protected?”. The answer to the question has been based on an analysis of relevant international legislation, examples from case law, and legal literature using a doctrinal research method.

This thesis has explored the issue of climate refugees as one category of persons forcibly displaced by the adverse effects of climate change. In this thesis, a climate refugee has been defined as a person who is forcibly displaced due to being affected by the adverse effects of climate change and who migrates transnationally. While there is no unified legal definition of climate refugees, the research relies on the suggested broad definition.

The phenomenon of climate change-related migration can be divided to separate categories, including environmental migrants, internally displaced persons (IDPs), and climate refugees. While the concept of environmental migration is widely recognized, the forced transboundary migration of climate refugees lacks comprehensive understanding and legal recognition. The fact that climate refugees remain undefined in international law raises multiple issues, such as a lack of research and effective international policies. The research has shown how climate refugees can be established protection under international law despite the absence of a unified legal definition.

International refugee protection regime, based on the 1951 Refugee Convention and its Optional Protocol from 1967, is the most important framework for displaced persons. By closely examining the Convention, the research established that the definition of a refugee in Article 1(A)2 provides an exhaustive list of grounds for the well-founded fear of persecution, which does not include environmental factors as the

basis for persecution, the Convention thereby excludes climate refugees from its definition. The research aimed to explore possibilities to interpret the rules of the Convention to expand the notion of persecution to include the adverse effects of climate change. The dominant view of international law is that the 1951 Refugee Convention rarely applies to persons displaced in the context of natural disasters and climate change.²⁶⁹ While support for the use of the 1951 Refugee Convention for climate refugees can be found in scholarly literature, it was found that the link to the Convention grounds of persecution is still mandatory for a climate refugee to fall under the Convention definition. Thus, there needs to be a fear of being persecuted for the reasons of race, religion, nationality, or membership of a particular social group or political opinion in addition to the fear of becoming a victim of the adverse effects of climate change. Furthermore, the research noted how the politics of refugees and refugee law can affect the possibility of applying the Convention definition to climate refugees and the willingness of the international community to widen the scope of interpretation of the Convention refugee definition. All things considered; international refugee law does not provide climate refugees legal status in the international community, and it does not provide protection mechanisms for them in cases of sole environmental harm.

The applicability of human rights law in establishing climate refugee status was explored through UN frameworks such as the report of the UN Human Rights Council and the right to a healthy environment, rules of state responsibility, and temporary protection and by analyzing case law concerning the impacts of climate change to human rights. While the research found that human rights law recognizes the fundamental rights of climate refugees as it does of all persons, it further enables the protection of climate refugees through the principles of human rights protection. There have however not been specific protection mechanisms for the persons defined as climate refugees. The relevant case law, especially the *Teitiota* case, shows prominence for recognizing climate refugee status being the first climate asylum case handled by the UN Human Rights Committee. While the resolution of the CCPR set the threshold of proving state failure on climate action and showing the real risk the applicant is facing in the home country high, the case paves the way for future claims on climate-change forced displacement. Compared to international refugee law,

²⁶⁹ Scott 2020, p. 4

human rights law seems to give more opportunities for climate refugees to claim recognition and protection after being displaced when their fundamental human rights are in danger. However, the threshold to show the real risk for human rights has remained high, but the development of human rights law in context of taking account the impacts of the adverse effects of climate change, and the threat climate change poses to persons, creates pathway for future policies. On the base of the findings of this research, human rights law seems to be the most promising way for climate refugees to claim status and protection, as it is possible to apply human rights law principles to them even despite they are not officially defined under international law. I believe that the more pressure climate refugees will give to human rights institutions and tribunals, the faster there will be established concrete regimes for them. The role of tribunals in interpreting human rights law in future cases of persons seeking climate asylum will be a defining factor in climate refugees future. Courts have the possibility to steer the interpretation of law to enable the protection of climate refugees.

Climate change-related issues, such as climate refugees, require also analysis of international environmental law. Where international environmental law provides obligations for states in the common fight against climate change, the rules of responsibility can also be reflected to the status of climate refugees. This thesis focused mainly on studying how the UNFCCC and the Paris Agreement operate in relation to forced displacement, and how the inequality of contributing to the anthropogenic climate change, as well as the unequal burden of the adverse effects of climate change can in the light of environmental law obligations provide responsibility claims that would support the recognition of climate refugees and establish them the right to protection mechanisms. The thesis brought up the possibility to view responsibility claims from a moral perspective, when the history of colonization and the difference of the possibilities of developed and developing states to tackle climate change related issues are taken into account. Further, the Nansen Initiative and the Platform for Disaster Displacement as institutions showing example of the interconnection of climate displacement and environmental law was elaborated, finding that even though they do not provide binding rules or recognize climate refugees' status legally, they provide a policy example that could be used in the case of climate refugees.

On the base of the findings of the thesis, it can be concluded that there does not exist a legal status for climate refugees under international law when it is sought from refugee law, human rights law, and refugee law. The thesis argues that one main issue in relation to climate refugees remains the lack of universal definition, which on its own makes it easier for the international community to overlook the issue. Moreover, lack of definition makes collecting accurate data hard and hinders research, that could be used to argue in favor of recognizing climate refugee status. Furthermore, based on the findings of this research, international law does not provide straightforwardly accessible protection mechanisms for climate refugees. However, in the most adverse case it can be possible to derive protection from human rights law and especially the right to life as promised in Article 6 of the ICCPR. Human rights law applied together with the responsibility claims from environmental law can establish a base for protecting climate refugees even without a unified legal definition.

While international refugee law has been found to be of the least help for climate refugees in claims for protection, international human rights law and international environmental law can provide concrete protection through their application. In fact, it can be argued that by connecting the environmental law responsibilities of states with the responsibilities for protecting human rights, the ignoring of climate refugees could constitute violations of the state's obligations. However, as long as climate refugees are not legally and globally defined, their possibilities for protection rely on the interpretation of existing international law rules by juridical institutions. The case law of the UN Human Rights Committee shows, that even without legal definition, claims of climate refugee status can be initiated. However, courts can only handle individual cases, and for a more permanent and long-lasting solution to approach the issue of climate refugees, there is a real need for international policies.

Defining climate refugees is not mandatory for them to be protected under international law, as seen from this research. However, to globally confront the issue of environmental displacement and to be prepared for the movement of persons when climate change accelerates, climate refugees should be defined. In the international community, it is most likely that the instance defining climate refugees would be the UN. Only after having a certain definition for climate refugees, the real scope of the issue can be understood. Additionally, the definition would enable

excluding other categories of environmental displacement from being mixed to climate refugees.

In the context of climate refugees, there are many interesting questions to discover in the future. For instance, what will happen to the people whose home countries disappear due to the adverse effects of climate change? Will the people of the small island states, that sink under the water as the sea level rises, end up being stateless? Or do States end up buying land from other State's territories to provide their citizen a place to live? Will nationality continue existing even though the actual land of a nation-state disappears?²⁷⁰ It remains for the future to show how these issues will be tackled. This is a topic that would need further research, as it can also affect the approach of climate refugees. While doing the finishing touches of the research in the summer of 2024, the UNHCR published in June, as part of their legal and protection policy research series, a review of literature, legislation and case law of the protection of persons displaced across borders in context of climate change. While not analysing the paper further in the research at this point, it is noteworthy to mention that the UNHCR is, in an increasing volume, trying to take part in the discussion of the emerging issue of climate refugees.²⁷¹

Based on the findings of the research, raising climate refugee claims under human rights law seems like a promising method to obtain protection for climate refugees. Even though international human rights and environmental law can be applied to climate refugees and the rights can be sought in court proceedings, I believe there will be established separate policies for climate refugees soon. It could be efficient to have regional policies for climate refugees so that the relocation will not require overwhelming resources for persons in vulnerable situations. Another suggestion to consider in establishing policies for the protection of climate refugees is to broaden the operations of the PDD and institutionalize them to operate with the United Nations Refugee Agency. To tackle the issue internationally and to take advantage of the already existing knowledge of environmental movements, operations should be done under the UN.

²⁷⁰ Wennersten and Robbins 2017, p. 230

²⁷¹ Kälin – Entwisle Chapuisat 2024

References

Books

- Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement*. Cornell University Press, 2013.
- Benoit Mayer - François Crépeau, *Research Handbook on Climate Change, Migration and the Law*. Edward Elgar, 2017.
- Cathryn Costello – Michelle Foster – Jane McAdam, *Introducing International Refugee Law as a Scholarly Field*, p. 1-20 in Cathryn Costello, Michelle Foster and Jane McAdam (eds.), *The Oxford Handbook of International Refugee Law*. Oxford Handbooks, 2021
- Christopher McDowell - Gareth Morrell, *Displacement Beyond Conflict: Challenges for the 21st Century*. Berghahn Books, 2010.
- Essam El-Hinnawi, *Environmental Refugees*. United Nations Environment Programme, 1985.
- Hélène Lambert, *Customary Refugee Law*, p. 240-257 in in Cathryn Costello, Michelle Foster and Jane McAdam (eds.), *The Oxford Handbook of International Refugee Law*. Oxford Handbooks, 2021.
- Hélène Ragheboom, *The International Legal Status and Protection of Environmentally-Displaced Persons: a European Perspective*. Brill, 2017.
- Ilan Kelman, *Does Climate Change Cause Migration?* p. 123-135 in Elena Fiddian-Qasmiyeh (eds.), *Refuge in a Moving World: Tracing Refugee and Migrant Journeys across Disciplines*. UCL Press, 2020.
- James C. Hathaway - Michelle Foster, *The Law of Refugee Status*. Cambridge University Press, 2014.
- Jane McAdam, *Climate Change, Forced Migration, and International Law*. Oxford University Press, 2012.
- John R. Wennersten – Denise Robbins, *Rising Rides: Climate Refugees in the Twenty-First Century*. Indiana University Press, 2017.
- Leonie Reins - Geert van Calster, *Paris Agreement on Climate Change: a commentary*. Edward Elgar Publishing, 2021.
- Maria Pia Carazo, *Contextual Provisions (Preamble and Article 1)*, p. 107-122 in Daniel Klein et al. (eds.), *The Paris Agreement on Climate Change: Analysis and Commentary*, Oxford University Press, 2017.
- Mark Gibney - Gamze Erdem Türkelli - Markus Krajewski - Wouter Vandenhole, *The Routledge Handbook on Extraterritorial Human Rights Obligations*. Routledge, 2022.

- M. Rafiqul Islam – Md. Jahid Hossain Bhuiyan, *An Introduction to International Refugee Law*. Brill, 2013.
- Navroz K. Dubash, *India in a Warming World: Integrating Climate Change and Development*. Oxford University Press, 2019.
- Neel Ahuja, *Planetary Specters: Race, Migration, and Climate Change in the Twenty-First Century*. The University of North Carolina Press, 2021.
- Pierre-Marie Dupuy – Jorge E. Viñuales, *International Environmental Law*. Cambridge University Press, 2018.
- Rebecca Hamlin, *The Politics of International Refugee Law and Protection*, p. 97.113 in in Cathryn Costello, Michelle Foster and Jane McAdam (eds.), *The Oxford Handbook of International Refugee Law*. Oxford Handbooks, 2021.
- Stephen Castles, *Afterward: What Now? Climate-Induced Displacement after Copenhagen*, p. 239-246 in Jane McAdam (eds.), *Climate Change and Displacement: Multidisciplinary Perspectives*. Bloomsbury Publishing Plc, 2010.

Articles

- Andrew Baldwin, *Racialisation and the Figure of the Climate-Change Migrant*. *Environment and Planning A: Economy and Space*, 45/2013, p. 1474-1490.
- Angela Williams, *Turning the Tide: Recognizing Climate Change Refugees in International Law*. *Law and Policy* 30(4) 2008, p. 502-529.
- Ayako Hatano, *Emerging International Norms to Protect “Climate Refugees”?: Human Rights Committee’s Decision on Teitiota v New Zealand*. *Journal of Human Security Studies* 10(2) 2021, p. 32-50.
- Chiara Scissa, *The Climate Changes, Should EU Migration Law Change as Well? Insights from Italy*. *European Journal of Legal Studies* 14(1) 2022, p. 5-23.
- Christopher W. Blair – Guy Grossman – Jeremy M. Weinstein, *Forced displacement and asylum policy in the developing world*. *International Organization* 76(2) 2022, p. 337-378.
- Cristopher Mccrudden. *Legal Research and the Social Sciences*. *Law Quarterly Review* 122/2006, p. 632-650.
- Daniel Ghezelbash – Nikolas Feith Tan, *COVID-19: A WATCHING BRIEF. The End of the Right to Seek Asylum? COVID-19 and the Future of Refugee Protection*. *International Journal of Refugee Law* 32(4) 2020, p. 668–679.
- David Hodgkinson – Tess Burton – Young Heather, *The hour when the ship comes in: a convention for persons displaced by climate change*. *Monash University Law Review* 36(1) 2010, p. 69-120.

- Elena Papadakos, The Lack of Teeth in Teitiota: Exploring the Limits of the Groundbreaking U.N. Human Rights Committee Case. *Natural Resources Journal* 63(2) 2023, 356-366.
- Frank Biermann – Ingrid Boas, Preparing for a warmer world: Towards a global governance system to protect climate refugees. *Global environmental politics* 10(1) 2010, p. 60-88.
- Francesca Rosingoli, Seeking Recognition for Climate Refugees. Are States the Only Game in Town? *Georgetown Journal of International Affairs*, 15th March 2023, p. 1-8. Accessed from <https://gjia.georgetown.edu/2023/03/15/seeking-recognition-for-climate-refugees-are-states-the-only-game-in-town/>. Date used 10th May 2024.
- Gaim Kibreab, Climate Change and Human Migration: a Tenuous Relationship Symposium. *Fordham Environmental Law Review* 20(2) 2017, p. 357-401.
- Hadi Allafta – Christian Opp, Climate Change Paradox: The Least Responsible for It Encounters the Most of Its Implications, *Climate* 12(3) 2024.
- Issa Ibrahim Berchin – Isabela Blasi Valduga – Jéssica Garcia – José Baltazar Salgueirinho Osório de Andrade Guerra, Climate change and forced migrations: An effort towards recognizing climate refugees. *Geoforum* 84/2017, p. 147-150.
- Jane McAdam, Swimming against the Tide: Why a Climate Change Displacement Treaty is Not the Answer. *International Journal of Refugee Law* 23(1) 2011, p. 2–27.
- Jane McAdam, From The Nansen Initiative to the Platform on Disaster Displacement: Shaping International Approaches to Climate Change, Disasters and Displacement. *University of New South Wales Law Journal* 39(4) 2016, p. 1518-1546.
- Jessica B. Cooper, Environmental Refugees: Meeting the Requirements of the Refugee Definition. *New York University Environmental Law Journal* 6(2) 1998, p. 480-530.
- Jesus Verdu Baeza, Climate Refugees, Human Rights and the Principle of Non-Refoulement, Peace & Security, *EuroMediterranean Journal of International Law and International Relations* 11/2023, p. 1-23.
- Kaisu Koskela, Boundaries of Belonging: Highly Skilled Migrants and the Migrant Hierarchy in Finland. *Journal of Finnish Studies* 17(1-2) 2013, p. 19-41.
- Kamal Md Uddin, Bangladesh, Climate Change and Vulnerability: Local and Global Responsibility. *Environmental Policy and Law* 43(4-5) 2013, p. 252-259.
- Kerstin Reibold, Settler Colonialism, Decolonization and Climate Change. *Journal of Applied Philosophy* 40(4) 2023, p. 624-640.
- Kujo Elias McDave – Palmer Prince Dagadu, Reconsidering the Status and Rights of Climate Refugees Under International Law. *International Journal of Law and Society* 6(2) 2023, p. 168-172.

- Lester R. Brown – Patricia L. McGrath – Bruce Stokes, Twenty-two Dimensions of the Population Problem. *Worldwatch Paper* 5, 1976.
- Lucia Rose, The World after Teitiota: What the HRC Decision Means for the Future of Climate Migration. *San Diego Journal of Climate & Energy Law* 12(41) 2021, p. 41-62.
- Luke Hutcheson, Common but Differentiated Climate Responsibilities: Australia's Role in the Pacific Islands. *Perth International Law Journal* 5/2020, p. 125-132.
- Luke Potter, A Bottom-up Disaster-Displacement Protection Approach: Why Local Governments Matter. *Human Rights Defender* 26(3) 2017, p. 24-26.
- Lydia Hiraide, Climate refugees: A useful concept? Towards an alternative vocabulary of ecological displacement. *Politics* 43(2) 2023, 267-282.
- Marta Picchi, Climate Change and the Protection of Human Rights: The Issue of Climate Refugees. *US-CHINA Law Review* 13(576) 2016, p. 576-583.
- Norman Myers, Environmental refugees: a growing phenomenon of the 21st century. *Philosophical Transactions: Biological Sciences* 357/2002, p. 609-613
- Norman Myers, Environmental Refugees in a Globally Warmed World. *BioScience* 43(11) 1993, p. 752-761.
- Oleg Smirnov – Gallya Lahav – John Orbell – Minghua Zhang – Tingyin Xiao, Climate Change, Drought, and Potential Environmental Migration Flows Under Different Policy Scenarios. *International Migration Review* 57(1) 2023, p. 36-67.
- Paramjit S. Jaswal – Stellina Jolly, Climate Refugees: Challenges and Opportunities for International Law. *Journal of the Indian Law Institute* 55(1) 2013, p. 45-58.
- Raphael Nawrotzki, Climate Migration and Moral Responsibility. *Ethics Policy Environment* 17(1) 2014, p. 69-87.
- Reiko Obokata – Luisa Veronis – Robert McLeman, Empirical research on international environmental migration: a systematic review. *Population and environment* 36(1) 2014, p. 111-135.
- Rina Kuusipalo, Exiled by Emissions—Climate Change Related Displacement and Migration in International Law: Gaps in Global Governance and the Role of the UN Climate Convention, *Vermont Journal of Environmental Law* 18(4) 2017, p. 614-647.
- Robin Bronen, Alaskan Communities' Rights and Resilience, *Forced Migration Review* 31/2008, p. 30-32.
- Robin Bronen, Climigration: Creating a National Governance Framework for Climate-Forced Community Relocation, *New York University Review of Law & Social Change* 45(4) 2022, p. 574-631.

- Saber Salem – Armin Rosencranz, Climate Refugees in the Pacific. *Environmental Law Institute* 50(7) 2020, p. 1-6.
- Shahinoor Khanam – Aqib Tahmid, Can the Principle of Non-Refoulement Trigger the Principle of Common but Differentiated Responsibilities in Relation to Climate Refugees. *International Journal of Law Management & Humanities* 5(6) 2022, p. 155-165.
- Suzanne Egan, The Doctrinal Approach in International Human Rights Scholarship, UCD Working Papers in Law, Criminology & Socio-Legal Studies, 19/2017.
- Tarja Ketola, Climigration: How to Plan Climate Migration by Learning from History? *Global Environment* 8(2) 2015, p. 410-45.
- Vally Koubi – Lena Schaffer – Gabriele Spilker – Tobias Böhmelt, Climate events and the role of adaptive capacity for (im-)mobility. *Population and Environment* 43/2022, p. 367-392.
- Venla Niva, The interplay of environmental and social drivers of migration - A global synthesis. Aalto University publication series, Doctoral Theses, 148/2022.
- Verena Kahl, A human right to climate protection – Necessary protection or human rights proliferation? *Netherlands Quarterly of Human Rights*, 40(2) 2022, p. 158-179.
- Vignesh Ram Hariharan, The Effect of the Paris Agreement on Climate Refugees. *Supremo Amicus* 21/2020, p. 27-43.
- Yoomi Kim – Ktsuya Tanaka – Shunji Matsuoka, Environmental and economic effectiveness of the Kyoto Protocol. *PloS one* 15(7) 2020, p. 1-15.

Legislation and Conventions

- Aliens Act 301/2004
- Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 4th November 1950
- European Union, Charter of Fundamental Rights of the European Union, 2012/C 326/02, 26th October 2012
- European Union, Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. *Official Journal* 212, 7.8.2001, p. 12–23
- Kyoto Protocol to the United Nations Framework Convention on Climate Change, 11th December 1997
- Paris Agreement to the United Nations Framework Convention on Climate Change, 12th December 2015

United Nations Commission on Human Rights, Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, 11 February 1998.

United Nations General Assembly, Convention Relating to the Status of Refugees, 28th July 1951

United Nations General Assembly, International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966.

United Nations General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 10th December 1984

United Nations General Assembly, United Nations Framework Convention on Climate Change, A/RES/48/189, 20th January 1994

United Nations, Vienna Convention on the Law of Treaties, United Nations Treaty Series vol. 1155, p. 331, 23 May 1969

Case Law

European Court of Human Rights Grand Chamber, Case of Verein Klimaseniorinnen Schweiz and others v. Switzerland, 9th April 2024.

Court of cassation, II Civil Chamber sent. 12 November 2020 - 24 February 2021, no 5022, 29th April 2021.

Court of Cassation, I Civil Section, 4th February 2020, n 2563.

Daniel Billy et al v. Australia, CCPR/C/135/D/3624/2019, UN Human Rights Committee (HRC), 22nd September 2022.

Ioane Teitiota v. New Zealand, CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC), 7th January 2020.

Verwaltungsgerichtshof Baden-Württemberg 11. Senat, A 11 S 2042/20, 17th December 2020.

Other Sources

BBC, Finland to close entire Russian border after migrant surge, 2023a, 28th November 2023. Accessed from <https://www.bbc.com/news/world-europe-67555626>. Date used 11th March 2024.

BBC, Finland accuses Russia of aiding illegal migrant crossings, 2023b, 14th November 2023. Accessed from <https://www.bbc.com/news/world-europe-67420564>. Date used 11th March 2024.

CarbonBrief, Revealed: How colonial rule radically shifts historical responsibility for climate change, 26th November 2023. Accessed from <https://www.carbonbrief.org/revealed->

- [how-colonial-rule-radically-shifts-historical-responsibility-for-climate-change/](#). Date used 26th April 2024.
- CPRD, Climate-Induced Displacement and Migration: Policy Gaps and Policy Alternative, A Likely Legal Instrument for a Rights-Based Political Solution, November 2015.
- European Commission, New EMN inform explores displacement and migration related disasters, climate change and environmental degradation. 8th May 2023. Accessed from https://home-affairs.ec.europa.eu/news/new-emn-inform-explores-displacement-and-migration-related-disasters-climate-change-and-2023-05-08_en. Date used 3rd April 2024.
- Environmental Justice Foundation, Impact Report & Accounts: Protecting People and Planet 2022. Accessed from https://ejfoundation.org/resources/downloads/EJF-Annual-Report-2022_digital.pdf. Date used 31st January 2024.
- European Migration Network, Displacement and migration related to disasters, climate change and environmental degradation. May 2023. Accessed from https://home-affairs.ec.europa.eu/system/files/2023-05/EMN_Inform_climate_related_migration_final_May2023_090523.pdf. Date used 3rd April 2024.
- Hossein Ayazi – Elsadig Elsheikh, Climate Refugees: The Climate Crisis and Rights Denied. UC Berkeley: Othering & Belonging Institute, 2019.
- Internal Displacement Monitoring Centre and Norwegian Refugee Council, Global Report on International Displacement 2023: Internal displacement and food security, 2023.
- IOM, Outlook on Migration, Environment and Climate Change. International Organization for Migration, 2014.
- IOM, Climate Change and Migration: Improving Methodologies to Estimate Flows. IOM Migration Research Series, No. 33, 2008.
- IPCC, Climate Change 2022 Impacts, Adaptation and Vulnerability. Summary for Policymakers, Technical Summary and Frequently Asked Questions. Working Group II contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change. 2022. Accessed from: https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryVolume.pdf. Date used 26th April 2024.
- Norman Myers, Environmental refugees: An Emergent Security Issue. 13th Economic Forum, 22nd May 2005.
- OCHA, Revised Pakistan 2022 Floods Response Plan Final Report (Issued 15 Dec 2023), 18th December 2023. Accessed from <https://www.unocha.org/publications/report/pakistan/revised-pakistan-2022-floods-response-plan-final-report-issued-15-dec-2023>. Date used 18th March 2024.
- OECD, The Polluter-Pays Principle. OECD Analyses and Recommendations. Paris 1992. Accessed from

[https://one.oecd.org/document/OCDE/GD\(92\)81/En/pdf#:~:text=Under%20the%201972%20and%201974,is%20in%20an%20acceptable%20state%22](https://one.oecd.org/document/OCDE/GD(92)81/En/pdf#:~:text=Under%20the%201972%20and%201974,is%20in%20an%20acceptable%20state%22). Date used 26th April 2024.

Platform on Disaster Displacement, Internal Displacement in the Context of Disasters and the Adverse Effects Of Climate Change: Submission to the High-Level Panel on Internal Displacement by the Envoy of the Chair of the Platform on Disaster Displacement, May 2020.

Platform on Disaster Displacement, Platform on Disaster Displacement (PDD) Strategy 2024-2030.

Platform on Disaster Displacement, The Platform on Disaster Displacement: Towards Better Protection for People Displaced Across Borders in the Context of Disasters and Climate Change. Accessed from <https://disasterdisplacement.org/the-platform/our-response/>. Date used 3rd May 2024.

Platform on Disaster Displacement, 'Platform on Disaster Displacement (PDD) Strategy 2019-2023, Annex I: Workplan'. Accessed from <https://disasterdisplacement.org/wp-content/uploads/2022/07/30062022-Annex-I-PDD-Workplan-2019-2023.pdf>. Date used 20th May 2024.

Platform on Disaster Displacement, UNECE Regional Review, Intervention by the PDD Secretariat. Intergovernmental Conference: Session 1, 11th March 2024. Accessed from https://migrationnetwork.un.org/system/files/docs/UNECE%20Regional%20Review_Intervention_PDDSecretariat.pdf. Date used 20th May 2024.

Prokkola et al., Climate Migration: Towards a better understanding and management Finland and a global perspective, Finnish Government Publications of the Government's analysis, assessment and research activities 2021:42.

Rajavartioloaitos, Rajoitukset Suomen itärajan rajanylityspaikoilla, 2024. Accessed from <https://raja.fi/rajoitukset-suomen-itarajan-rajanylityspaikoilla#:~:text=Suomi%20rajoittaa%20maahantuloa%20it%C3%A4rajan%20rajanylityspaikoilla,huhtikuuta%202024%20saakka.&text=S%C3%A4%C3%A4nt%C3%B6jen%20vastainen%20maahantulo%20Suomen%20it%C3%A4rajalla,kaikkien%20it%C3%A4rajan%20rajanylityspaikkojen%20sulkemisen%20my%C3%B6t%C3%A4>. Date used 11th March 2024.

Richard Black, Environmental Refugees: Myth or Reality? New Issues in Refugee Research, Working paper no. 34. United Nations High Commissioner for Refugees.

Sam Bookman, Indigenous Climate Litigation in Anglophone Settler-Colonial States. Verfassungsblog, 25th March 2022. Accessed from <https://verfassungsblog.de/indigenous-climate-litigation-in-anglophone-settler-colonial-states/>. Date used 27th April 2024.

- Sanna Raita-Aho, Tutkija: Venäjä on ohjannut ihmisiä Suomen rajalle ”lähes ihmis-kauppaa” vastaavalla tavalla, Helsingin Sanomat 4.7.2024. Accessed from: <https://www.hs.fi/suomi/art-2000010541409.html>. Date used 5th July 2024.
- The Nansen Initiative, Disaster-Induced Cross-Border Displacement: Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, December 2015.
- Thomas Tanner et al., The Triple Dividend Resilience: Realising development goals through the multiple benefits of disaster risk management. Overseas Development Institute (ODI), International Bank for Reconstruction and Development / International Development Association or The World Bank, 2015.
- United Nations Climate Change, What is Kyoto Protocol? Accessed from https://unfccc.int/kyoto_protocol. Date used 17th April 2024.
- UNFCCC, Third rolling plan of action of the task force on displacement for 2022–2024, FCCC/SB/2022/2/Add. Accessed from https://unfccc.int/sites/default/files/resource/Third_rolling_PoA_TFD_%202022.pdf. Date used 17th May 2024.
- UNFCCC, Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015, 29th January 2016
- UNHCR, Climate change and displacement: the myths and the facts, 15th November 2023. Accessed from <https://www.unhcr.org/uk/news/stories/climate-change-and-displacement-myths-and-facts>. Date used 9th December 2023.
- UNHCR, Climate Change, Displacement and Human Rights, March 2022. Accessed from <https://www.unhcr.org/sites/default/files/legacy-pdf/6242ea7c4.pdf>. Date used 9th March 2024.
- UNHCR, Data and statistics: Global Trends, 2023. Accessed from <https://www.unhcr.org/global-trends>. Date used 20th February 2024.
- UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection, Geneva, February 2019.
- UNHCR, Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters, 1 October 2020. Accessed from <https://www.refworld.org/policy/legalguidance/unhcr/2020/en/123356>. Date used 9th March 2024.
- UNHCR, Rohingya Refugee Crisis Explained, 23 August 2023. Accessed from <https://www.unrefugees.org/news/rohingya-refugee-crisis-explained/>. Date used 23rd February 2024.
- UNHCR, The Nansen Initiative leaflet. Accessed from: <https://www.unhcr.org/media/nansen-initiative-leaflet>. Date used 3rd May 2024.

- United Nations Environmental Programme, In historic move, UN declares healthy environment a human right, 28th July 2022. Accessed from <https://www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right>. Date used 6th April 2024.
- United Nations General Assembly, Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Note by the Secretary-General, A/74/161, 15 July 2019.
- United Nations General Assembly, The human right to a clean, healthy and sustainable environment. Seventy-sixth session Agenda item 74 (b), 26th July 2022.
- United Nations Human Rights Council, Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Human rights and climate change: draft resolution / Angola, Azerbaijan, Bangladesh, Belgium, Ethiopia, Fiji, France, Georgia, Germany, Haiti, Ireland, Kenya, Kiribati, Marshall Islands, Micronesia (Federated States of), Peru, Philippines, Portugal, Romania, Seychelles, State of Palestine, Sudan, Sweden, the former Yugoslav Republic of Macedonia, Tunisia, Viet Nam, 28th June 2016. Accessed from <https://digitallibrary.un.org/record/845966?v=pdf>. Date used 27th March 2024.
- United Nations Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change. and human rights, 15th January 2009. Accessed from <https://www.refworld.org/reference/themreport/unhrc/2009/en/65384>. Date used 20th March 2024.
- Völkerrechtsblog, Climate migrants – How German courts take the environment into account when considering non-refoulement, 3.3.2021. Accessed from <https://voelkerrechtsblog.org/climate-migrants/>. Date used 12th April 2024.
- Walter Kälin and Hannah Entwisle Chapuisat, Protection of Persons Displaced Across Borders in the Context of Disasters and the Adverse Effects of Climate Change: A Review of Literature, Legislation and Case Law to Support the Implementation of the Global Compact on Refugees. PPLA/2024/01, UN High Commissioner for Refugees (UNHCR), June 2024.
- Walter Kälin and Nina Schrepfer, Protecting People Crossing Borders in the Context of Climate Change Normative Gaps and Possible Approaches. PPLA/2012/01, UN High Commissioner for Refugees (UNHCR), February 2012.
- World Bank Blogs, Listening to the First Responders of Climate Change: The Social Dimensions of Climate Change in the Pacific. May 10th 2023. Accessed from <https://blogs.worldbank.org/eastasiapacific/listening-first-responders-climate-change-social-dimensions-climate-change-pacific>. Date used 14th February 2024.