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**Environmental migrants in the age of global warming**

Master's thesis

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## **Declaration**

1. I hereby declare that I have compiled this thesis using the listed literature and resources only.
2. I hereby declare that my thesis has not been used to gain any other academic title.
3. I fully agree to my work being used for study and scientific purposes.

In Prague on  
**1<sup>st</sup> of August**

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## References

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## **Abstract**

This research is conducted to investigate the concept of so-called climate refugees and climate migrants under the international law and within the social framework. This paper focuses on the existing legal definitions of those terms, on the historical context, their official regulation under the international law and its implications, including some rights and freedoms, global and local protection, international support, and assistance. To explore legal rights and freedoms climate related refugees/migrants might have, several international treaties and documents were studied during completing the research, including the 1951 UN Refugee Convention, the 1969 OAU Refugee Convention, the 1984 Cartagena Declaration, and the UNCHR Strategic Framework for Climate Action.

The analysis of the historical background is important for identifying the impact of the climate change on vulnerable population and for applying this knowledge to the modern cases. Exploring the legal status and legal framework is essential for identifying gaps in international law and addressing the existing challenges. Another significant problem which is addressed in this paper is the absence of the universal treaty-based definition of climate refugees, what significantly affects the way of treating and assisting people displaced in a result of climate change.

Through examining the socio-economic, cultural, political, and environmental applications in regions affected by climate-induced stressors, the paper evaluates effectiveness of the provided support and stresses the necessity of global cooperation towards reducing climate-induced migration.

## **Abstrakt**

Tento výzkum je prováděn s cílem prozkoumat koncept takzvaných klimatických uprchlíků a klimatických migrantů podle mezinárodního práva a v rámci sociálního rámce. Tento článek se zaměřuje na existující právní definice těchto pojmů, na historický kontext, jejich oficiální regulaci podle mezinárodního práva a jeho důsledky, včetně některých práv a svobod, globální a lokální ochrany, mezinárodní podpory a pomoci. Abychom prozkoumali právní práva a svobody, které by klimaticky související uprchlíci/migranti mohli mít, bylo během dokončování výzkumu studováno několik mezinárodních smluv a

dokumentů, včetně Úmluvy OSN o právním postavení uprchlíků z roku 1951, Úmluvy OAU o uprchlících z roku 1969, Kartagenské deklarace z roku 1984 a Strategického rámce pro akci v oblasti klimatu UNHCR.

Analýza historického pozadí je důležitá pro identifikaci dopadu změny klimatu na zranitelnou populaci a pro aplikaci těchto znalostí na moderní případy. Zkoumání právního statusu a právního rámce je zásadní pro identifikaci mezer v mezinárodním právu a řešení stávajících výzev. Dalším významným problémem, který je v tomto článku řešen, je absence univerzální smluvně založené definice klimatických uprchlíků, což významně ovlivňuje způsob, jakým jsou lidé vysídlení v důsledku změny klimatu zacházeni a jaká pomoc jim je poskytována.

Prostřednictvím zkoumání socioekonomických, kulturních, politických a environmentálních aplikací v regionech postižených klimatickými stresory článek hodnotí účinnost poskytované podpory a zdůrazňuje nutnost globální spolupráce k redukci migrace způsobené změnou klimatu.

## **Keywords**

Climate change, migration, climate refugees, environmental migrants, legal status, international law

## **Klíčová slova**

Změna klimatu, migrace, klimatičtí uprchlíci, environmentální migranti, právní status, mezinárodní právo

## **Title**

Environmental migrants in the age of global warming

## **Název práce**

Environmentální migranti v době globálního oteplování

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## Introduction

During the last few decades, climate change has become a global problem for the whole population of the Earth. Climate change may appear as extreme temperatures, environmental degradation, severe droughts, rising sea levels, and other extraordinary weather conditions<sup>1</sup>. One of the destructive effects of the climate change might also be persons' displacement and increased migration. The climate-change induced internal and external (international) migration contains a few stages: premigration, prevention, mitigation, and adaptation<sup>2</sup>. International migration may concern specific international law regulation, such as in case of those migrants who fulfil the criteria of the refugee definition. Those individuals might be granted refugee status and be protected in accordance with the rules applicable for refugee protection. In accordance with the UN Refugee Convention 1951, which regulates the international refugee regime, a "refugee" is "someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion."<sup>3</sup> Terminologically, a refugee must be distinguished from a general term of an asylum seeker. While the latter is also a person who is looking for protection in another country, the regulation stems from domestic law. Thus, the thesis focuses on international refugee regulation rather than asylum-seekers in regional law.

To regulate the issue of international migration and provide migrants with rights and freedoms, the International Organisation for Migration was created by the UN institution (IOM)<sup>4</sup>. IOM, besides the umbrella term for migrants, has created a definition for environmental migrants as well. According to the IOM, environmental migrants are

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<sup>1</sup> Intergovernmental Panel on Climate Change (IPCC). *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*. Geneva, Switzerland, 2014. Available at: [https://www.ipcc.ch/site/assets/uploads/2018/05/SYR\\_AR5\\_FINAL\\_full\\_wcover.pdf](https://www.ipcc.ch/site/assets/uploads/2018/05/SYR_AR5_FINAL_full_wcover.pdf) [Accessed 20 February 2024]

<sup>2</sup> MCLEMAN, Robert. *Climate and Human Migration: Past Experiences, Future Challenges*. Cambridge: Cambridge University Press, 2014. Available at: <https://www.cambridge.org/core/books/climate-and-human-migration/9A0C23A48BB3E9AA2D84D2A1E3F8C4D3>. [Accessed 20 February 2024]

<sup>3</sup> UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137. Available at: <https://www.refworld.org/docid/3be01b964>. [Accessed 20 February 2024]

<sup>4</sup> MARTIN, Susan. "Climate Change, Migration, and Governance." *Global Governance*, vol. 16, no. 3, 2010, pp. 397–414. *JSTOR*. Available at: <http://www.jstor.org/stable/29764954>. [Accessed 20 February 2024]

*“Persons or groups of persons who, predominantly for reasons of sudden or progressive change in the environment that adversely affects 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”<sup>5</sup>.*

Thus, an environmental migration covers both internal as well as international migrants, however due to the treaty-based sources, this thesis focuses on the international ones. Since environmental migration became an international issue, the global society has attempted to address this issue and find a prominent solution regarding the displacement of populations caused by climate-related factors. International organisations and institutions, governments, scholars, and other international actors had to work together to create a doctrine with guidelines, mechanisms, and strategies in order to mitigate the common problem and protect vulnerable migrants by providing them with the necessary assistance and access to justice. On the regional level, some states with high environmental migration index created local documents which provide people displaced because of climate change with specific rights and protection.

However, the existing international legal framework for climate migrants still does not cover the gap in the international law. This paper focuses on examining ways of defining environmental migrants under international law. The purported definition might have significant value for international actors and its implications might affect the status of climate migrants and guarantee them access to rights and freedoms. The absence of a universally accepted definition of climate refugees possesses a threat for the safety of the displaced population affected by climate-related factors. Traditional definitions of refugees and external migrants do not cover the gap in understanding the complex nature of climate refugees and migrants, therefore this group of displaced persons are in need of an internationally recognized status with an implementation under international law.

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<sup>5</sup> International Organization for Migration. *Discussion Note: Migration and the Environment*. Ninety-Fourth Session, 2007, 8pages. No. MC/INF/288, Available at: [https://www.iom.int/sites/g/files/tmzbd1486/files/jahia/webdav/shared/shared/mainsite/about\\_iom/en/council/94/MC\\_INF\\_288.pdf](https://www.iom.int/sites/g/files/tmzbd1486/files/jahia/webdav/shared/shared/mainsite/about_iom/en/council/94/MC_INF_288.pdf) [Accessed 20 February 2024]

This paper argues for the international recognition of climate migrants as refugees, granting them legal rights and protections. The research relies on primary sources such as international and regional conventions and particular sources of the international law. The UN Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol address environmental issues causing migration, while the International Organization for Migration (IOM) supports legal research on climate migrants<sup>6</sup>. The Paris Agreement also highlights the need to address climate displacement. This research explores whether climate-induced migration should be a basis for refugee status under the existing framework of the UN Refugee Convention 1951. It aims to clarify the definition and legal protection of climate migrants and raise global awareness of the impact climate change has on millions of people. Secondary sources used in the research, including the reviews of existing legal cases, law books and journals, and legal dictionaries, aim to provide a better explanation of an existing problem in the field of environmental migration.

Methodologically, this paper employs policy, historical, and comparative analyses to provide a comprehensive understanding of the topic. Policy analysis includes an examination of the above-mentioned sources of the international law and regional legal documents, which is needed to identify existing gaps and limitations. Historical analysis focuses on exploring the evolution of the refugee definition and finding the origins of the refugee concept. Comparative analysis is crucial for examining differences and similarities of various approaches which are created worldwide to address the refugee problem and environmental migration. Through integration of the above-listed analyses, the research aims to provide a comprehensive understanding of the issue of environmental migration under international law. The main research question is whether the category of climate migrants fit in the definition of a refugee under international law and under the UN Refugee Convention of 1951. The research consists of two chapters which deal with the historical background of refugee definitions, analyse the elements of the definition of a refugee, explore regional refugee definitions established in the OAU Refugee Convention and in the Cartagena Declaration, which include additional elements and grounds, and analyse existing legal cases in the field of climate-induced migration.

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<sup>6</sup> UN General Assembly, *United Nations Framework Convention on Climate Change: resolution / adopted by the General Assembly, 20 January 1994. A/RES/48/189. Available at: <https://www.refworld.org/docid/3b00f2770.html> [Accessed 20 February 2024]*

# 1. Chapter. The refugee definition and its limitations

## 1.1 Historical context of the term “refugee” and the Conventional definition

The need to establish the definition of a “refugee” became urgent after the end of World War II, when Western powers had to deal with a significant number of refugees coming from Eastern European countries.<sup>7</sup> This displacement was rooted in the devastation of wartime destruction, political upheaval, and ideological shifts across Europe. In order to address a massive refugee problem, the International Refugee Organization (IRO) was created by the United Nations. According to the Constitution of the International Refugee Organization<sup>8</sup>, the organization is responsible for assisting refugees and displaced persons and providing legal and political protection for them<sup>9</sup>. The definition of a refugee was also covered by the Constitution of the IRO and referred to such concepts as a “fear of persecution” and discrimination.

The definition itself mentioned in Part I of Annex I of the Constitution of IRO states that the term “refugee” is meant to describe people who either left or remain in their state of origin and due to certain reasons fit one of the specific criteria, which include:

- being a victim of oppressive fascist or Nazi regime, including regimes which collaborate with these ideologies;
- being a war orphan;
- being victims of Spanish or the Falangist Regime;
- being a refugee before World War II due to reasons such as religion, race, nationality, or political opinions.

The paragraph C of the General Principles listed in the Part I of the Annex I of the Constitution also established that certain categories of people, such as traitors, war criminals,

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<sup>7</sup> MARRUS, Michael Robert. *The Unwanted: European Refugees in the Twentieth Century*. New York: Oxford University Press, 1985. 414 pages. Available at: <https://archive.org/details/unwantedeuropean0000marr> [Accessed 22 February 2024]

<sup>8</sup> United Nations. *Constitution of the International Refugee Organization*. United Nations, Treaty Series, vol. 18, p. 3, 1946. Available at: <https://www.refworld.org/docid/3ae6b37810.html> [Accessed 22 February 2024]

<sup>9</sup> *Ibid.*

and quislings, could not enjoy the international refugee status. Besides, as the Constitution states, children, including orphans, should be given priority assistance.

The refugee term created by the Constitution of the International Refugee Organisation refers to the aftermath of World War II and includes historical context which explains the origin of the refugee crisis in Europe in 1940-1950s. The creation of the IRO and its definition of a refugee occurred against the backdrop of broader geopolitical dynamics. Western powers played a crucial role in shaping international responses to the developing refugee crisis, driven by both humanitarian concerns and strategic goals, where the responsibility to protect arose<sup>10</sup>. However, the Cold War context further complicated efforts to address persons displacement, with refugee assistance often used as a tool of diplomacy and propaganda by both Western and Eastern bloc countries<sup>11</sup>.

The definition of a refugee provided by the Constitution of the International Refugee Organization (IRO) highlights the specific problems and outcomes of the war which affected certain categories of people. This definition was the first official term provided by the UN organisation and helped to create other legal definitions of a refugee which all countries could use in order to identify refugees and the status of a refugee and to fulfil their legal obligations. By providing a common understanding of who qualifies as a refugee and the obligations of states towards them, this definition facilitated international cooperation when responding to refugee crises, ensuring that displaced individuals received the protection and assistance they urgently needed.

The establishment of the IRO and the legal framework provided in its Constitution highlighted the importance of future development of international refugee law. One of the major legacies of the International Refugee Organisation became the UN Refugee Convention 1951 relating to the Status of Refugees 1951 and its Protocol 1967, which defined status of refugees under international law. Moreover, the principles promoted by the

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<sup>10</sup> BETTS, Alexander. *Forced Migration and Global Politics*. A John Wiley & Sons, Ltd., Publication, 2009. 216 pages. Available at: <https://download.e-bookshelf.de/download/0000/5993/89/L-G-0000599389-0015302762.pdf> [Accessed 22 February 2024]

<sup>11</sup> LOESCHER, Gil. *The UNHCR and World Politics: A Perilous Path*. Oxford University Press, Oxford, 2001. 431 pages. Available at: [https://www.google.cz/books/edition/The\\_UNHCR\\_and\\_World\\_Politics/aiaQDwAAQBAJ?hl=cs&gbpv=1&dq=inauthor:%22Gil+Loescher%22&printsec=frontcover](https://www.google.cz/books/edition/The_UNHCR_and_World_Politics/aiaQDwAAQBAJ?hl=cs&gbpv=1&dq=inauthor:%22Gil+Loescher%22&printsec=frontcover) [Accessed 22 February 2024]

IRO inspired the creation of the United Nations High Commissioner for Refugees in 1950, which became the main international body in the field of assisting and protecting refugees all around the globe. Therefore, the creation of the IRO and the refugee definition established by its Constitution play a vital role in creating legal framework for and promoting international and interregional cooperation for assisting refugees, however after assisting over one million of refugees in the aftermath of World War II the Organisation was dissolved.

The second official legal definition of a refugee provided by the UN Organization was created in 1951 as an outcome of acceptance of the United Nations Convention relating to the Status of Refugees, often referred to as the Refugee Convention<sup>12</sup>. The need to establish the UN Refugee Convention 1951 was explained by the requirement for a clear definition of a refugee and regulation of the status, which would highlight the moral obligation of all states to assist and protect displaced persons and address issues causing possible refugee crisis. According to the researchers, the Convention has 3 major goals<sup>13</sup>. First, it is meant to establish the main and most universal international refugee definition. Second, it establishes and explains the refugee status, including rights it contains. Third, it creates the guidance on implementation of the UN Refugee Convention 1951 and its provisions.

The first Article of Chapter I of the UN Refugee Convention 1951 contains the definition of a refugee. In accordance with the Article, a refugee should be identified as a person who:

*“as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual*

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<sup>12</sup>Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention), article 1. Available at: <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees> [Accessed 25 February 2024]

<sup>13</sup> HYNDMAN, Patricia. "The 1951 Convention Definition of Refugee: An Appraisal with Particular Reference to the Case of Sri Lankan Tamil Applicants." *Human Rights Quarterly*, vol. 9, no. 1, 1987, pp. 49-73. JSTOR. Available at: <https://doi.org/10.2307/761946>. [Accessed 25 February 2024]

*residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it*<sup>14</sup>.

Thanks to the Protocol for the Refugee Convention adopted in 1967, the definition was relaxed by removing the limitation regarding events occurred before 1 of the January of 1951<sup>15</sup>. According to Lentini, the need of adoption of the Protocol was caused by a new emerging refugee crisis at that time, which already had different causes and required legal expansion of several criteria, including timelines and geographical borders<sup>16</sup>.

Some authors claim that the definition of the “refugee” is conceptual due to the fact that there are many different variations of definitions of a refugee provided by international and regional legal documents<sup>17</sup>. This implies that the “refugee” term represents an abstract conceptual category and might have various interpretations. The theoretical basis of the definition, however, consists of several key elements, including a relationship between the state and the refugee based on trust and protection, and the idea of inevitable persecution<sup>18</sup>. Generally, the state is responsible for providing all necessary protection and assistance to the refugee escaping persecution, while the refugee can accept such protection trusting the state’s actions. This relationship empathises the mutual dependence between the asylum seeker and the country granting this asylum.

Besides the official definition of a refugee, there are similar terms which exist in the area of international law, and one of these terms is “migrant”. According to the unofficial definition provided by the International Organisation for Migration (IOM), a migrant is defined as “a person who moves away from his or her place of usual residence, whether

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<sup>14</sup> Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention), article 1. Available at: <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees> [Accessed 25 February 2024]

<sup>15</sup> Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267. Available at: <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees> [Accessed 25 February 2024]

<sup>16</sup> LENTINI, Elisabeth J. *The definition of refugee in international law: Proposals for the future*. Boston College Third World Law Journal, Newton Centre, MA, vol. 5, no. 2, June 1985, pp. 183-198. Available at: <https://core.ac.uk/download/pdf/71463219.pdf> [Accessed 26 February 2024]

<sup>17</sup> EDWARDS, Alice. "Refugee Status Determination in Africa." *African Journal of International and Comparative Law*, vol. 14, no. 2, 2006, pp. 204-233. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1535377](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1535377) [Accessed 26 February 2024]

<sup>18</sup> SHACKNOVE, Andrew E. "Who Is a Refugee?" *Ethics* 95, no. 2 (1985): 274–84. Available at: [http://www.mcrq.ac.in/RLS\\_Migration\\_2020/Reading\\_List\\_2020/Module\\_E/Shacknove\\_Who%20is%20a%20Refugee.pdf](http://www.mcrq.ac.in/RLS_Migration_2020/Reading_List_2020/Module_E/Shacknove_Who%20is%20a%20Refugee.pdf) [Accessed 26 February 2024]

within a country or across an international border, temporarily or permanently, and for a variety of reasons”<sup>19</sup>. A similar definition is provided by the United Nation High Commissioner for Refugees (UNHCR), where migrants are identified as “people who move by choice rather than to escape conflict or persecution, usually across an international border (‘international migrants’), for instance to join family members already abroad, to search for a livelihood, or for a range of other purposes”<sup>20</sup>. The abovementioned definitions allow us to highlight the most important criteria of the definition of a migrant, which includes internal or external voluntary displacement, either as a temporary solution or a permanent relocation, as well as the reason (or reasons) for the relocation. However, the main difference between “refugee” and “migrant” is seen through identifying the root causes of displacement. Whilst migrants usually choose to move to another state voluntarily in order to seek better social or economic opportunities, improve their living conditions, or reunite with families, refugees are forced to leave their habitual residences due to a fear of persecution, violence, ill-treatment, and loss of state protection to seek international assistance and support.

Overall, the UN Refugee Convention 1951 established the international status and the definition of a refugee, as well as the legal rules and principles defining the international regime of assisting refugees, granting asylum, and providing legal, humanitarian, and political support to refugees. In the global sense, the UN Refugee Convention 1951 lays the foundation for a collective obligation and responsibility made by the world nations to guarantee the rights and dignity of refugees and address forced migration in different regions. As it is stated in the UNCHR position paper which analyses Article 1 of the UN Refugee Convention 1951, “, a balanced and holistic application of the definition, incorporating human rights law principles, has the best chance of yielding the correct result.”<sup>21</sup>. This statement highlights the significance of incorporating the provisions of the Convention using the right mechanisms and approaches, as well as ensuring the observance of human rights and freedoms of refugees. Therefore, the UN Refugee Convention of 1951

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<sup>19</sup> International Organization for Migration. *Who is a migrant?* Available at: <https://www.iom.int/who-migrant-0> [Accessed 27 February 2024]

<sup>20</sup> United Nations High Commissioner for Refugees. *Emergency Handbook: Migrant Definition*. Available at: <https://emergency.unhcr.org/protection/legal-framework/migrant-definition> [Accessed 27 February 2024]

<sup>21</sup> United Nations High Commissioner for Refugees. *Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees (UNHCR Position Paper)*. *Refugee Survey Quarterly*, vol. 20, no. 3, 2001, pp. 77–104. Available at: <http://www.jstor.org/stable/45053446> [Accessed 27 February 2024]



and its definition of a refugee represent an international legal ground for addressing forced migration.

## 1.2 Definition criteria

### A. Persecution

To have a better understanding of this term, it is important to analyse all elements of the definition of a “refugee” mentioned in the UN Refugee Convention 1951 . One of the elements, a well-founded fear of persecution, is a multifaced historical concept, which involves legal, political, and moral components. The concept of persecution became an important element of the refugee’s definition after the World War II. During the Cold War, Western states were using an element of persecution to provide help for asylum-seeking refugees and immigrants from the East. In other words, the concept of persecution can be also understood as a systemic violation of human rights and lack of a state protection (Hathaway 1991, pp. 104-105)<sup>22</sup>. Persecution includes several main components, such as a severe and sustained harm, asymmetric and systemic threat, and unjust discriminatory target. According to Jaakko Kuosmanen, the first component represents a scope of destructive actions such as torture, forced displacements, killing or imprisonment, which represent a serious threat to a person’s life and freedom, or might be severely harmful. The second component of persecution can be described as a harmful behaviour, which violates basic human rights and happens systematically. The third component highlights the deliberate victimization of persons which has discriminatory origins. This victimization targets persons based on their race, ethnicity, personal characteristics, sexual orientation, political opinions, or religious beliefs, what results in social injustice<sup>23</sup>. Not every reason mentioned above is however also covered by the definition of a refugee, as seen above.

The complexity of the term “refugee” applies different academic concepts which help to analyse this term. First, the legal definition provided in the UN Refugee Convention 1951

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<sup>22</sup> HATHAWAY, James C. *The Law of Refugee Status*. Toronto: Butterworths, 1991, 252 pages. Available at: <https://archive.org/details/lawofrefugeestat000hath> [Accessed 2 March 2024]

<sup>23</sup> KUOSMANEN, Jaakko. “*What’s So Special About Persecution?*” *Ethical Theory and Moral Practice*, vol. 17, no. 1, 2014, pp. 129–40. *JSTOR*. Available at: <http://www.jstor.org/stable/24478705> [Accessed 2 March 2024]

helps significantly to identify the main criteria of refugee status and conditions which are needed for refugee recognition. This official definition stated in the International Refugee Convention has several main criteria which play a major role in identifying a refugee. Those criteria include a) a well-founded fear of persecution, b) loss of a state protection, and c) being outside the borders of a country of origin (displaced).

Persecution is strongly correlated with discrimination and harassment. However, the concept of persecution is more complex than just a concept of punishment<sup>24</sup>. The criterion of persecution also means that a person must face a persecution caused by hatred towards their religion, social group, race, nationality, or political opinions. All these criteria are listed in the UN Refugee Convention of 1951 and its 1967 Protocol.

To look closer at the above-mentioned criteria, it is important to mention that the fear of persecution should be genuine and reasonable, while the persecution itself should be seen as a form of significant violation of human rights and freedoms (it might include torture, unfair imprisonment, discrimination etc.)<sup>25</sup>. The case law which affects international legal practices might define persecution as well based on certain events happening all across the world. For example, the European Court of Human Rights in its decision *Salah Sheekh v. the Netherlands*<sup>26</sup> has stated that the applicant, who is a representative of the minority Ashraf population group, and members of his family, has been permanently robbed, threatened, harassed, ill-treated, beaten, raped, kicked and left without food and water by the armed militia group in Mogadishu, Somalia. The above-mentioned circumstances were defined as persecution by the Court; therefore, the applicant legally had a right to seek for an asylum in the Netherlands<sup>27</sup>. A similar situation occurred when a group of Somalian and Eritrean nationals arrived in Italy on a boat and were held in the sea by the authorities (Case of *Hirsi*

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<sup>24</sup> GOODWIN-GILL, Guy S., MCADAMS, Jane. *The Refugee in International Law*. 4<sup>th</sup> ed. Oxford: Oxford University Press., 2021, 864p. Available at: <https://opil.ouplaw.com/display/10.1093/law/9780199207633.001.0001/law-9780199207633> [Accessed 3 March 2024]

<sup>25</sup> HATHAWAY, James C., and Michelle Foster. *The Law of Refugee Status*. 2nd ed. Cambridge: Cambridge University Press, 2014, 693 pages. Available at: <https://www.cambridge.org/core/books/law-of-refugee-status/2E4AE6854731D8E7184ACD6B0F4FE019>. [Accessed 3 March 2024]

<sup>26</sup> European Court of Human Rights. (2007). *Salah Sheekh v. the Netherlands*, no. 1948/04, ECHR 2007-I. Available at: <https://hudoc.echr.coe.int/fre?i=001-78986>. [Accessed 3 March 2024]

<sup>27</sup> European Court of Human Rights. *M.N. and Others v. Belgium*, Application no. 3599/18, 11 January 2007. Available at: <https://hudoc.echr.coe.int/fre?i=001-202468>. [Accessed 3 March 2024]

*Jamaa and others v. Italy*<sup>28</sup>). The applicants were looking for asylum, escaping from their governments, which aimed to expose applicants to inhuman and degrading treatment, including detention in overcrowded and unsanitary conditions, and being systematically exposed by ill-treatment. In this case The Court found that the applicants faced a real risk of being subjected to inhuman or degrading treatment in Libya. Moreover, the Court stated that by being repatriated to Somalia and Eritrea, the applicants could face persecution. According to the Court's decision, all applicants were granted a refugee status due to fulfilling the requested criteria<sup>29</sup>. A religious persecution took place in India a few decades ago, where a minority of Sikhs faced systematic violence and discrimination, particularly during the anti-Sikh riots in 1984 following the assassination of Prime Minister Indira Gandhi.<sup>30</sup> During that time the case of *Chahal v. the United Kingdom* was raised, where the applicant, Mr. Chahal, who was "contended, kept handcuffed in insanitary conditions, beaten to unconsciousness, electrocuted on various parts of his body and subjected to a mock execution" by Indian authorities, argued against his deportation to India<sup>31</sup>. In another case the European Court on Human Rights declared that the applicant, Othman (Abu Qatada), a Jordan national who was supposedly linked to a terrorist organisation, could not be deported back to his country by the United Kingdom due to facing a potential persecution, such as torture<sup>32</sup>. Despite of the Court's warnings, the United Kingdom sent the applicant back in 2013. Therefore, persecution might have different forms and happen in different circumstances, and the only criteria which would stay the same is, according to many scholars, a violation of human rights as a core element of persecution<sup>33</sup>. However, this statement does not imply that every case of discrimination or unfair treatments might qualify as persecution.

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<sup>28</sup> European Court of Human Rights. *Hirsi Jamaa and Others v. Italy*, Application No. 27765/09, 23 February 2012. Available at: <https://hudoc.echr.coe.int/eng?i=001-109231>. [Accessed 3 March 2024]

<sup>29</sup> European Court of Human Rights, *Chahal v. the United Kingdom*, Application no. 22414/93, Judgment of 15 November 1996. Available at: <https://hudoc.echr.coe.int/eng?i=001-58004>. [Accessed 3 March 2024]

<sup>30</sup> AULAKH, Jasneet. 'Just another riot in India': remembering the 1984 anti-Sikh violence. *Acta Academica: Critical views on society, culture and politics*, vol. 47, no. 1, 2015. Available at: <https://journals.ufs.ac.za/index.php/aa/article/view/1487> [Accessed 5 March 2024]

<sup>31</sup> European Court of Human Rights. *Chahal v. the United Kingdom*, Application No. 22414/93, 15 November 1996. Available at: <https://hudoc.echr.coe.int/eng?i=001-58004>. [Accessed 5 March 2024]

<sup>32</sup> European Court of Human Rights. "Othman (Abu Qatada) v. United Kingdom." [2012] ECHR 56. Available at: <https://hudoc.echr.coe.int/eng?i=002-44> [Accessed 5 March 2024]

<sup>33</sup> HATHAWAY, James C., FOSTER Michelle *The Law of Refugee Status*. 2nd ed. Cambridge: Cambridge University Press, 2014, 773 pages. Available at: <https://www.cambridge.org/core/books/law-of-refugee-status/2E4AE6854731D8E7184ACD6B0F4FE019> [Accessed 6 March 2024]

Persecution is a complex term which includes both objective and subjective elements. Objective elements of a well-founded fear of persecution include harmful and violent policies or actions, whilst subjective elements involve the intentions and motivation of the persecutor, victim's experience, or potential impact on a victim<sup>34</sup>. A "well-founded" fear of persecution is essential in the definition as well, and it must be based on reasonable and serious reasons<sup>35</sup>. In accordance with analysis provided by Stephen B. Young, a fear of persecution should include an intent to deny or prohibit the advantage of a person and should have sustained or systematic character (i.e. extended discrimination)<sup>36</sup>. These deliberate actions named by the author emphasize the serious nature of such harm. "An intent to deny or prohibit advantage" correlates with the subjective element of a well-founded fear when a subject of persecution experiences risk or danger. "Sustained or systematic" character correlates with an objective element of a well-founded fear, which is often legally interpreted through certain evidence represented in a court.

#### B. Grounds for persecution

The grounds of the refugee persecution, listed in the 1951 UN Refugee Convention, include religion, nationality, race, membership of a certain social group, and political opinion. Persecution based on religious grounds affects groups or individuals which belong to certain religion or expose certain religious beliefs. Such persecution, in particular, might restrict groups or individuals from practicing the religion they belong to, as well as punish or cause harm for being a part of a certain religion or certain belief system<sup>37</sup>. Persecution based on nationality targets people who belong to certain nationality or country, which also involves violence, causing harm, or even forcing targeted groups or individuals to leave

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<sup>34</sup> KIM, Grace. *Abandoning the Subjective and Objective Components of a Well-Founded Fear of Persecution*. *Northwestern Journal of Law and Social Policy*, 16(2), 2021, pp.192-218. Available at: <https://scholarlycommons.law.northwestern.edu/njls/vol16/iss2/7>. [Accessed 6 March 2024]

<sup>35</sup> UNHCR. *Handbook on Procedures and Criteria for Determining Refugee Status*. Geneva: United Nations High Commissioner for Refugees, 2019. Accessed June 10, 2024. <https://www.unhcr.org/publications/legal/5ddfcd47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html>. [Accessed 6 March 2024]

<sup>36</sup> YOUNG, Stephen B. "Who Is a Refugee? A Theory of Persecution." In *Defense of the Alien* 5 (1982): pp. 38–52. <http://www.jstor.org/stable/23141002>. [Accessed 7 March 2024]

<sup>37</sup> United Nations High Commissioner for Refugees (UNHCR). *Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, 2024. Available at: <https://www.unhcr.org/40d8427a4.pdf> [Accessed 7 March 2024]

certain territory or country<sup>38</sup>. Persecution based on race, or racial persecution, affects groups or individuals who belong to certain race or ethnic group. Besides violence and attacks, such persecution might involve social exclusion and systemic racism<sup>39</sup>. Persecution which targets people who belong to particular social groups might affect persons who share similar social status, background, are involved in certain economic, social, political activities, or have similar habits<sup>40</sup>. Moreover, members of a particular social group might be people who have a particular gender or sexual orientation, who have identical congenital condition, certain disabilities or illnesses, or similar background which is impossible to change<sup>41</sup>. In such cases, claims of persecution might be legitimate when subjects of persecution experience harmful actions and rights violation, discriminative practices against them, economic hardship, or marginalisation<sup>42</sup>. The last ground for persecution mentioned in the 1951 UN Refugee Convention is political opinion, which refers to political opinions, beliefs, thoughts, or ideas that a certain individual or a group might have<sup>43</sup>. For expressing particular political opinions or beliefs, people might be persecuted by governments or non-governmental organisations.

The above listed grounds illustrate various types of persecution, highlighting discriminations, violence, and ill-treatment of refugees. Such harm and mistreatment negatively affect livelihoods of groups and individuals and represents a threat for a community; therefore, it is necessary to address these cases and provide refugees with

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<sup>38</sup> United Nations High Commissioner for Refugees (UNHCR). *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, 2019. Available at: <https://www.unhcr.org/3d58e13b4.pdf> [Accessed 10 March 2024]

<sup>39</sup> United Nations Office on Genocide Prevention and the Responsibility to Protect. *Framework of Analysis for Atrocity Crimes*, 2018. Available at: [https://www.un.org/en/genocideprevention/documents/about-us/Doc.3\\_Framework%20of%20Analysis%20for%20Atrocity%20Crimes\\_EN.pdf](https://www.un.org/en/genocideprevention/documents/about-us/Doc.3_Framework%20of%20Analysis%20for%20Atrocity%20Crimes_EN.pdf) [Accessed 10 March 2024]

<sup>40</sup> ALEINIKOFF, T.A. “Membership in a Particular Social Group”: *Analysis and Proposed Conclusions. Background Paper for “Track Two” of the Global Consultations*. United Nations High Commissioner for Refugees (UNHCR), 2021. Available at: <https://www.unhcr.org/uk/sites/uk/files/legacy-pdf/3b83b1c54.pdf> [Accessed 10 March 2024]

<sup>41</sup> European Union Agency for Asylum (EUAA). *EASO Guidance on Membership in a Particular Social Group*, 2022. [Available at: <https://euaa.europa.eu/sites/default/files/EASO-Guidance-on%20MPSG-EN.pdf>] [Accessed 10 March 2024]

<sup>42</sup> United Nations High Commissioner for Refugees (UNHCR). *Guidelines on International Protection: “Membership of a Particular Social Group” within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 2002. Available at: <https://www.unhcr.org/3d58de2da.pdf> [Accessed 1 Jul. 2024]

<sup>43</sup> European Union Agency for Asylum. (2022). *Practical Guide on Political Opinion*. 86 p. Retrieved from <https://euaa.europa.eu/sites/default/files/publications/2022-12/Practical-Guide-Political-Opinion.pdf> [Accessed 10 March 2024]

international support and assistance. The UN Refugee Convention 1951 plays an important role in ensuring that groups and individuals fleeing persecution shall be recognized as refugees and provided with the necessary protection and rights to rebuild their lives.

### C. Loss of a state protection

The concept of "loss of a state protection" in the definition of a refugee refers to a situation where an individual or a group is no longer able to enjoy the protection, and rights granted by the state of origin or habitual residence due to a well-founded fear of persecution. The UN Refugee Convention 1951 establishes that a person claiming a refugee status must be unable to receive protection from their government or be unwilling to enjoy the state's protection due to a fear of being persecuted. A loss of state protection implies inability to remain safe in one's home country and a need to look for safety in a different state.

State protection might include legal protection, what ensures access to the juridical procedures and legal mechanisms when human rights of individuals are violated, diplomatic protection, such as human rights protection abroad, physical protection which aims to ensure individuals physical safety and security, and socio-economic protection, where individuals get access to equal socio-economic opportunities.<sup>44</sup> In the case of *X. v. Sweden*<sup>45</sup>, the European Court on Human Rights stated that the applicant had a right for an asylum due to the lack of protection from his state, where he was continuously tortured and threatened and, therefore, had to look for an international protection. Analysing the applicant's origins and individual situation, the Court was concerned about his security and ability to reach an assistance from the Moroccan state which the applicant was from, therefore the Court ruled in a favour of the applicant<sup>46</sup>. This case demonstrates that the refugee status and the right to seek as asylum might be granted based on the lack of internal protection within borders of a country of origin or home state. However, in order to receive an asylum, a claimant must prove either the inability of their state to provide necessary protection, or to prove a well-founded fear of persecution, which also might indicate a lack of a state protection. In the

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<sup>44</sup> HATHAWAY, J. C. *The Rights of Refugees under International Law*. Cambridge University Press, 2005, 1184 pages. <https://doi.org/10.1017/CBO9780511614859> [Accessed 11 March 2024]

<sup>45</sup> European Court of Human Rights. (2012). *X v. Sweden*, Application no. 36417/10.

<sup>46</sup> European Court of Human Rights. "Case of *X v. Sweden* (Application no. 36417/16)." Council of Europe, 9 January 2018. Available at: <https://hudoc.echr.coe.int/eng?i=001-3084> [Accessed 12 March 2024]

case of *Canada v. Ward*, the Immigration and Refugee Board of Canada established that the claimant, a resident of Northern Ireland, had a well-founded fear of persecution due to publicly expressing a certain political opinion and being a member of para-military group with controversial ideology<sup>47</sup>. Therefore, in the light of the circumstances represented to the Board, The Board stated the returned either to Northern Ireland or to the United Kingdom might be dangerous for the claimant as he might be harmed or ill-treated in the country of his nationality. However, the Board stated that, despite the possibility of facing danger, it shall be proven that the country of claimant's nationality is uncappable or unwilling to provide an adequate protection in such case.

In order to provide assistance and protection, the international community has established a few legal instruments, such as regional and international conventions and agreements between states and other international actors. These instruments aim to establish a legal framework which would guarantee right and freedoms to persons seeking for international protection. The main principle that unites these states-members is the burden-sharing principle, which also highlights the necessity of a responsibility sharing. By creating international solidarity, global communities trying to address challenges which asylum seeking often face. International support, such as financial and humanitarian aid, social and medical welfare, technical support and other means of protection are crucial in assisting refugees' needs<sup>48</sup>. Moreover, as Alexander Betts claims, the refugee protection might be seen as a form of an international public good. Such protection might possibly benefit all members of a society and contribute to the prestige of a state providing protection on the international arena.

In a situation when persons are unable or unwilling to use a protection from their home country, they may seek refuge in other nations or through international mechanisms such as the United Nations High Commissioner for Refugees (UNHCR). This mechanism is based on certain principles which guarantee rights and freedoms of refugees, such as principle of non-discrimination, right to seek an asylum, durable solutions, voluntary

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<sup>47</sup> *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 (Supreme Court of Canada, 30 June 1993).

<sup>48</sup> BETTS, Alexander. *Public goods theory and the provision of refugee protection: The role of the joint-product model in burden-sharing theory*. *Journal of Refugee Studies*, vol. 16, no. 3, 2003, pp. 274-296. Available at: <https://doi.org/10.1093/jrs/16.3.274> [Accessed 15 March 2024]

repatriation, and a principle of non-refoulement.<sup>49</sup> This principle forbids states from returning individuals to their home countries where they may face persecution or serious violation of their rights.<sup>50</sup> The principle of non-refoulement has been also mentioned in the Article 3 of the “Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, or Punishment” from 10<sup>th</sup> of December 1984, which guarantees that a refugee will be protected from a forced return to their country of origin, where this individual might be put in danger or harmed<sup>51</sup>. The principle of non-refoulement, which is a central principle for the international refugee protection framework, was critically challenged in the case of *Ioane Teitiota v. Chief Executive of Ministry of Business, Innovation and Employment of New Zealand*<sup>52</sup>. The principle of non-refoulement implies the necessity of states to protect and assist asylum seekers who might face serious negative consequences in their country of origin or place of habitat such as harm or persecution, including the protection from a forced return to their home.<sup>53</sup> Therefore, this principle highlights the significance of providing effective international protection to refugees.

Besides the right of not being sent back, or the principle of non-refoulement, those people who have been granted a refugee status might, in accordance with the Fact Sheet No.20, Human Rights and Refugees, enjoy such rights as right to asylum, which is meant to provide refugees with safe stay in another country, right to freedom of movement, which allows refugees to move freely and voluntarily choose their place of residence within the borders of a hosting state, and right to nationality<sup>54</sup>.

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<sup>49</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Note on the Principle of Non-Refoulement*. November 1997. Available at: <https://www.refworld.org/policy/legalguidance/unhcr/1997/en/36258> [Accessed 18 March 2024]

<sup>50</sup> *Ibid.*

<sup>51</sup> United Nations. Office of the High Commissioner for Human Rights. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading> [Accessed 18 March 2024]

<sup>52</sup> New Zealand Supreme Court. *Ioane Teitiota v. Chief Executive of Ministry of Business, Innovation and Employment*. [2015] NZSC 107.

<sup>53</sup> United Nations High Commissioner for Refugees. *The Principle of Non-Refoulement under International Human Rights Law*. Available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf> [Accessed 18 March 2024]

<sup>54</sup> Office of the High Commissioner for Human Rights. *Fact Sheet No. 20, Human Rights and Refugees*. Available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet20en.pdf> [Accessed 18 March 2024]



The protection of refugees can be provided by the international agencies, which role is maintaining communication with governments who are part of the UN Refugee Convention 1951 or other international legal documents which protect refugees rights, advocating for adopting additional documents and agreements which are needed to provide help and assistance for refugees, discussing the necessity of implementation international rules, measures and mechanisms in order to make a status granting procedure more effective, and establishing legal framework for reaching the above mentioned goals<sup>55</sup>.

#### D. Being outside the borders of one's own country

Throughout history, numerous cases illustrate the political significance of the act of crossing international borders in seeking international protection from members of the global community. During the Rwandan Genocide, mass killing in Sudan and Myanmar, thousands of people fled to neighbouring countries to escape discrimination, violence and mistreatment in their own state<sup>56</sup>. Similarly, the Syrian Civil War caused a massive migration of people seeking support and assistance in European and other countries, which underscored the crucial role of crossing borders to access safety and international aid<sup>57</sup>. These events, among many others, highlight the importance and necessity of intervention and protection from international actors.

Therefore, another important criterion of a refugee definition provided by the UN Refugee Convention 1951 is being outside the country of former habitual residence. This criterion is correlated to the concept of lack of state protection and lack of assistance and support in general. The situation when someone (either group or an individual) is forced to leave their country of origin usually underlines the reluctance or inability of nation's government to help their citizens. By crossing international borders, these individuals are trying to seek for international protection. Given the responsibility to provide such

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<sup>55</sup> WEISS, Paul. "*The International Protection of Refugees.*" *The American Journal of International Law*, vol. 48, no. 2, 1954, pp. 193–221. JSTOR. Available at: <https://doi.org/10.2307/2194371> [Accessed 20 March 2024]

<sup>56</sup> UZONYI, Gary. "*Unpacking the Effects of Genocide and Politicide on Forced Migration.*" *Conflict Management and Peace Science*, vol. 31, no. 3, 2014, pp. 225–243. JSTOR, Available at: <http://www.jstor.org/stable/26271361> [Accessed 20 March 2024]

<sup>57</sup> RDEM, İbrahim, and RAYCHEV, Yavor. "*Syrian Mass Migration in the 2015 EU Refugee Crisis: A Hybrid Threat or Chance for Implementing Migration Diplomacy?*" *Insight Turkey*, vol. 23, no. 2, 2021, pp. 235–258. JSTOR, Available at: <https://www.jstor.org/stable/27028548> [Accessed 20 March 2024]

protection, countries and international actors should recognize an asylum seeker and address his needs.

The concept of being outside of the borders of one's own country involves physical displacement, which proves that an asylum seeker is no longer in a situation where his rights and freedoms are guaranteed by the authorities of his place of origin or home state. This factor plays an important role in establishing the necessity of other nations and international organisation to provide safety and protection to such groups or individuals since their country of origin or home state failed to legally assist and support their citizens. Moreover, in accordance with Jane McAdams and Guy S. Goodwin-Gill, those individuals who cross international borders are more likely to receive international support than internally displaced persons (IDPs), who stay within their state's borders<sup>58</sup>. To protect refugees on international scale, international actors created the UN Refugee Convention 1951 and its 1967 Protocol, which officially establish a refugee status. This document does not directly establish rights and freedoms of internally displaced persons, these individuals should be protected by their local governments and authorities, or by the legal framework established by the Guiding Principles on Internal Displacement 1998<sup>59</sup>. Individuals who are given refugee status are protected by the established legal framework and the UNCHR mandate, which lead to creation of the common obligation of other nations to provide protection to refugees. At the same time, there are multiple gaps in international and regional law which protects rights of internally displaced persons, such as an absence of right of property lost compensation, a right to personal documentation, a right to enjoy assistance and protection during displacement<sup>60</sup>.

This act of crossing international borders and leaving the home state to escape danger is the essence of being placed outside one's country of origin. In accordance with the UN Refugee Convention 1951 a person who receives a refugee status shall be not returned to a

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<sup>58</sup> GOODWIN-GILL, Guy S., and MCADAM, Jane. *The Refugee in International Law* (3rd ed.). Oxford University Press, 2007, 786 pages. Available at: [https://books.google.cz/books/about/The\\_Refugee\\_in\\_International\\_Law.html?id=Rd\\_eDAAAQBAJ&redir\\_esc=y](https://books.google.cz/books/about/The_Refugee_in_International_Law.html?id=Rd_eDAAAQBAJ&redir_esc=y) [Accessed 20 March 2024]

<sup>59</sup> United Nations, Office for the Coordination of Humanitarian Affairs (OCHA). (1998). *Guiding Principles on Internal Displacement*. Available at: <https://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html> [Accessed 20 March 2024]

<sup>60</sup> DENG, Francis. M. *Internally Displaced Persons: Compilation and Analysis of Legal Norms*. United Nations, 1998, 416 pages. Available at: <https://digitallibrary.un.org/record/262238> [Accessed 20 March 2024]

state where he might face persecution and mistreatment. Such obligation leads to the shared responsibility of all member states to protect life and freedom of displaced people<sup>61</sup>. This duty is known as a principle of non-refoulement, which prohibits a return of an individual to a state where this person might face danger<sup>62</sup>. The non-return concept, in accordance with Mark R. von Sternberg's opinion, significantly expanded the interpretation of a refugee definition and secured their social rights and freedoms by applying various form of non-refoulement principles<sup>63</sup>. However, the principle of non-refoulement has limitations, such as the necessity to prove “a well-founded fear of persecution”, which is already listed among other criteria of a refugee definition established in the UN Refugee Convention 1951<sup>64</sup>.

The act of crossing international borders and, as a result, being outside of borders of one's home state or country of origin can be seen as one of the major criteria established by the UN Refugee Convention 1951 for gaining a refugee status. By crossing international borders and escaping danger and ill-treatment in habitual state a person is seeking for international protection, which is granted for every individual given a refugee status. Such protection and assistance is represented as a shared responsibility of all member states of the UN Refugee Convention 1951. Despite of the significant progress which has been made in expanding the protection granted to refugees, ongoing challenges and gaps in the protection of internally displaced persons highlight the need for continued efforts to ensure that all displaced individuals receive the support and assistance they seek for. The principle of non-refoulement represents a strong commitment of the international community to protect human rights and provide sanctuary to those fleeing danger.

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<sup>61</sup> JACOBSEN, Karen. *"Refugees and Global Migration."* Great Decisions, 2019, pp. 13-24. JSTOR, Available at: <https://www.jstor.org/stable/26739048> [Accessed 21 March 2024]

<sup>62</sup> LISTER, Matthew. *"Who Are Refugees?"* Law and Philosophy, vol. 32, no. 5, 2013, pp. 645-671. JSTOR, Available at: <http://www.jstor.org/stable/24572417> [Accessed 22 March 2024]

<sup>63</sup> VON STERNBERG, Mark R. *"The Evolving Law of Non-Refoulement and Its Influence on the Convention Refugee Definition."* In Defense of the Alien, vol. 24, 2001, pp. 205-223. JSTOR, Available at: <http://www.jstor.org/stable/23141409> [Accessed 22 March 2024]

<sup>64</sup> OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS. *The Principle of Non-Refoulement under International Human Rights Law.* Available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf> [Accessed 25 March 2024]

### 1.3 Challenges and limitations

The definition of a refugee established by the UN Refugee Convention 1951 has limitations which prevent various categories of asylum seekers from gaining a refugee status. One of the major limitations is the exhaustive list of the grounds of persecution. In accordance with the conventional refugee definition, there are five specific grounds of persecution, which include race, religion, nationality, political opinion and membership of a particular social group. This situation creates limitations for people displaced by other causes, which are not mentioned in the definition. Due to not fitting into the conventional refugee category, other asylum seekers might lack international protection. It is especially relevant in cases where people are displaced due to generalised violence, i.e. violence which does not fit the definitional above-mentioned grounds, and by climate change and environmental degradation<sup>65</sup>.

Therefore, one of the major limitations of the refugee definition is an exclusion of climate refugees, or people displaced as a result of climate or environmental change. The definition of a refugee provided by the UN Refugee Convention 1951 does not explicitly cover persons who are being displaced due to environmental factors<sup>66</sup>. This situation was partially caused by historical reasons since there were no global concerns about environmental degradation back in 1950s in the aftermath of the World War II. Due to the fact that the conventional refugee definition mentions persecution as one of the most important features, climate refugees do not fit this criterion. Environmental degradation and other climate-related issues are neither mentioned in the definition provided by the UN Refugee Convention 1951 nor in the Convention itself, therefore a procedure of claiming a refugee status becomes highly complicated for people displaced because of climate-related situations. Despite the standard refugee definition, a climate refugee is a more complex term and climate migration might be caused by several reasons which involve social, political, legal, and economic factors aside from environmental degradation. In accordance with the

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<sup>65</sup> KALIN, W., and SCHREPFER, N. *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches*. UNHCR Legal and Protection Policy Research Series, 2012. Available at: <https://www.unhcr.org/4f33f1729.pdf> [Accessed 2 May 2024]

<sup>66</sup> KUUSIPALO, Rina. "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*, vol. 18, no. 4, 2017, pp. 614–47. <https://www.jstor.org/stable/26388179>. [Accessed 2 May 2024]

legal analysis provided by the policy department of the European Parliament, the existing international legal definition of a refugee creates a gap in addressing rights and needs of climate refugees. Climate-induced migration is often caused by multiple factors; therefore, it is difficult to establish the connection between the environmental change and migration<sup>67</sup>. For these reasons, this thesis addresses the issue of climate migrants in Chapter 2.

Consequently, the legal definition of a refugee provided by the UN Refugee Convention 1951 emphasizes persecution as the criterion for refugee status, sidelining broader humanitarian considerations. According to the academic perspective, the convention's emphasis on persecution reflects a conceptual understanding of refugees as victims of human rights abuses rather than environmental crises<sup>68</sup>. Moreover, the conventional refugee definition faces several challenges. In accordance with Matthew Lister, the definition has moral challenges, practical challenges, and other problematic issues<sup>69</sup>. The main practical challenge is that the expansion of the definition might result in limited capacity for states to provide protection to extended number of refugees and lack of available resources<sup>70</sup>. Moral challenge of expanding the conventional definition is possible diluting of the unique protection and responsibilities offered by asylum seekers with a refugee status<sup>71</sup>. Therefore, the need to expand the conventional definition of a refugee might cause moral and practical questions about who qualifies for protection and why.

Global changes in climate and environmental degradation became a serious political, environmental, and social problem in the 1970s - 1980s, which was caused by dangerously increasing CO<sub>2</sub> levels in the atmosphere<sup>72</sup>. This situation raised political and legal concerns.

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<sup>67</sup> European Parliament. Directorate-General for External Policies. *Current challenges for International Refugee Law, with a focus on EU Policies and EU Co-operation with the UNHCR*, 2013. Available at: [https://www.europarl.europa.eu/RegData/etudes/note/join/2013/433711/EXPO-DROI\\_NT\(2013\)433711\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/note/join/2013/433711/EXPO-DROI_NT(2013)433711_EN.pdf) [Accessed 5 May 2024]

<sup>68</sup> COUNIL, Christel. "The Protection of "Environmental Refugees" in International Law", in: É. Piguet, A. Pécoud, P. de Guchteneire (eds), *"Migration and Climate Change"*, (Cambridge: Cambridge University Press and UNESCO, 2011), pp. 359–387. Available at: [https://www.researchgate.net/publication/352056242\\_MIGRATION\\_AND\\_CLIMATE\\_CHANGE\\_Edited\\_by](https://www.researchgate.net/publication/352056242_MIGRATION_AND_CLIMATE_CHANGE_Edited_by) [Accessed 5 May 2024]

<sup>69</sup> LISTER, Matthew. "Who Are Refugees?" *Law and Philosophy*, vol. 32, no. 5, 2013, pp. 645-671. Available at: <http://www.jstor.org/stable/24572417> [Accessed 5 May 2024]

<sup>70</sup> Ibid., p.648.

<sup>71</sup> Ibid., p.650.

<sup>72</sup> AUSUBEL, J.H., VICTOR, D.G., WERNICK, I.K. "The Environment Since 1970." *Consequences: The Nature and Implications of Environmental Change*, vol. 1, no. 3, 1995, pp. 2–15. The Rockefeller University. Available at: <https://phe.rockefeller.edu/publication/environment-since-1970/> [Accessed 6 May 2024].

and led to the creation of several regional and international legal documents and the foundation of international and regional organizations, which were meant to regulate the negative consequences of climate change. Many environmental programs and institutions, such as the UN Environmental Program, World Meteorological Organization, International Council of Scientific Unions etc., were created in order to establish an international legal climate regime<sup>73</sup>. However, these attempts to regulate environmental migration and attempts to address other legal challenges did not result in expanding the conventional refugee definition.

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<sup>73</sup> JAWAL, Paramjit S., and JOLLY Stellina. “*CLIMATE REFUGEES: CHALLENGES AND OPPORTUNITIES FOR INTERNATIONAL LAW*.” *Journal of the Indian Law Institute* 55, no. 1, 2013, pp. 45–58. Available at: <http://www.jstor.org/stable/43953626>. [Accessed 5 May 2024]

## **Chapter 2. The limitations of the definition of a climate migrant (refugee)**

Nowadays, environmental migration is occurring all around the world and becoming a serious global geopolitical concern. The rapid raise of environmental migration is driven by various factors. The changes in our ecosystem, often caused by human-involved activities, lead to natural disasters and environmental degradation, which is a crucial threat for many people in different regions. These events also negatively affect local societies and ecosystems, causing degradation of agricultural and industrial lands and severely damaging people's livelihoods. The most common outcome of these scenarios is human displacement, including migration of indigenous people, of disabled people with limited capacities, and displacement of vulnerable social groups. Moreover, besides forced migration, environmental vicissitudes have a negative impact on social and economic opportunities, healthcare, access to education and work, and severely harm people's livelihoods.

In some regions environmentally caused migration is higher than others, and, therefore, more dire. Among these regions is the Pacific region, where climate change is one of the main drivers of environmental migration. Environmental factors play a crucial role in human migration and livelihood disruption in the region. In the 1990 First Assessment Report of the Intergovernmental Panel on Climate Change the experts discussed the vulnerability of nations living on islands in the Pacific regions<sup>74</sup>. Rising sea-levels in coastal areas were the main ecological problem mentioned in the Report, and experts offered various solutions, including retreat, protection, and accommodation, to prevent future social and economic crisis.

To address existing ecological problems and mitigate their negative consequences, governments of islandic nations embraced their responsibility of close cooperation. To promote the partnership in the region and deal with the outcomes of climate change, The Framework for Resilient Development in the Pacific 2017-2030 (FRDP) was created by the

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<sup>74</sup> Intergovernmental Panel on Climate Change (IPCC), *Climate Change: The IPCC Scientific Assessment* — First Assessment Report, prepared by Working Group I: JT HOUGHTON, GJ JENKINS and JJ EPHRAUMS, Cambridge: Cambridge University Press, 1990. Available at: [https://www.ipcc.ch/site/assets/uploads/2018/03/ipcc\\_far\\_wg\\_I\\_full\\_report.pdf](https://www.ipcc.ch/site/assets/uploads/2018/03/ipcc_far_wg_I_full_report.pdf) [Accessed 14 May 2024]

Pacific Islands Forum representatives in 2016<sup>75</sup>. The FRDP is a voluntary guideline, which establishes main goals and principles for islandic nations in preventing climate disasters and promoting sustainable management in the region. This intergovernmental initiative represents a significant step towards minimizing impacts of climate change, implementing effective measures for strengthening resilient development, as well as sustainable actions, and incorporating local communities into decision-making process.

Despite all measures taken by the local authorities and international community, the migration is still a major issue in the Pacific region. To escape negative impacts of climate change, many people from Pacific local communities had to leave their home countries looking for a less dangerous place to live and accommodate their families. Whilst seeking an asylum in neighbouring countries or continents, climate-induced migrants often must deal with various challenges regarding to their ambiguous international legal status. Unlike traditional refugees which leave their countries of origin because of a fear of persecution, climate migrants usually fall into a legal grey area, what puts them in a vulnerable and unprotected environment. At the moment, unregulated migration in the Pacific islands represents a serious threat to the economy of the states, effectiveness of social welfare systems, productivity of agricultural sector, and the human living condition in the region<sup>76</sup>.

## **2.1 The definition of environmental refugees (migrants)**

Climate change and environmental degradation cause persons movement in different geographical regions across the world. This situation leads to the growing argument in the international community between national governments and non-governmental organizations regarding the need for international law-based regulation of climate induced migration. At first, terminology must be clarified though. There are terms like environmental migrants, climate refugees, and externally/internally displaced persons. They have common features and differences, and therefore should be studied in detail.

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<sup>75</sup> Secretariat of the Pacific Community. *Framework for Resilient Development in the Pacific. An Integrated Approach to Address Climate Change and Disaster Risk Management (FRDP)*. 2017-2030. 2016. Available at: [http://gsd.spc.int/frdp/assets/FRDP\\_2016\\_Resilient\\_Dev\\_pacific.pdf](http://gsd.spc.int/frdp/assets/FRDP_2016_Resilient_Dev_pacific.pdf) [Accessed 14 May 2024]

<sup>76</sup> PARKER, Rita. *Unregulated Population Migration and Other Future Drivers of Instability in the Pacific*. Lowy Institute for International Policy, 2018, 24 pages, *JSTOR*. Available at: <http://www.jstor.org/stable/resrep19790> [Accessed 14 May 2024]



In accordance with Article 1 of the UN Refugee Convention 1951, being a refugee means “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 [their] nationality and is unable or, owing to such fear, is unwilling to avail [themselves] of the protection of that country; or who, not having a nationality and being outside the country of [their] former habitual residence, is unable or, owing to such fear, is unwilling to return to it”<sup>77</sup>. However, this definition does not cover neither climate-induced migration, nor subcategory of climate migrants.

The IOM’s Glossary of migration includes the definition for climate migration, which is understood as a “movement of a person or groups of persons who, predominantly for reasons of sudden or progressive change in the environment due to climate change, are obliged to leave their habitual place of residence, or choose to do so, either temporarily or permanently, within a State or across an international border”<sup>78</sup>. The main difference between the standard definition of migrants and the definition of climate migrants is the reason for being displaced, which is a “sudden or progressive change in the environment due to climate change”. At the same time the Glossary differentiates climate migration and environmental migration. In accordance with the definition provided by the Glossary, environmental migrant is “a person or group(s) of persons who, predominantly for reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are forced to leave their places of habitual residence, or choose to do so, either temporarily or permanently, and who move within or outside their country of origin or habitual residence”<sup>79</sup>. In contrast to the definition of climate migrants, environmental migrants are being displaced as a result of changes in the environment that adversely affect their lives or living conditions. Environmental migration is a bigger category of migration caused primarily by environmental changes, whilst climate migration is a subcategory of

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<sup>77</sup> UN Refugee Convention of 1951, Art. 1.

<sup>78</sup> International Organization for Migration. *Glossary on Migration*. 2nd ed., International Migration Law Series, no. 34, 2019, p. 31. Available at: [https://publications.iom.int/system/files/pdf/iml\\_34\\_glossary.pdf](https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf) [Accessed 18 May 2024]

<sup>79</sup> International Organization for Migration. *Glossary on Migration*. 2nd ed., International Migration Law Series, no. 34, 2019, p. 64. Available at: [https://publications.iom.int/system/files/pdf/iml\\_34\\_glossary.pdf](https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf) [Accessed 18 May 2024]

environmental migration, specifically caused by change in the environment due to climate change.

Besides the definition of a climate migrant, the Glossary also contains the term “climate/environmental refugee”, which does not have any legal framework or universally accepted definition<sup>80</sup>. The term has been widely used by scholars and academics; however, in accordance with the Glossary, it has a misleading nature and should be replaced by other terms such as “environmental migrant” or “displaced persons”. The absence of a “climate refugee” definition is explained in the Glossary as the result of not being covered by the definition of refugee provided by the UN Convention 1951. The main argument is that climate-induced migration does not necessarily involves persecution and usually addressed by local governments which are often willing to protect their citizens from the negative outcomes of climate change<sup>81</sup>.

Nevertheless, the term “climate refugee” is not legally accepted and claimed as incorrect to use. Simo Kohonen, the Manager of the IOM Country Offices in Finland, empathizes the reasons of why the term “climate refugee” would not help to solve existing problems connected to increasing environmental migration. First, it is difficult to identify if environmental migration was driven by climate change itself or by the combination of other factors, including political, economic, social factors etc. Second, climate-induced migration is not always forced, and people might voluntarily choose to leave their country in order to find a place with better living conditions. Third, many persons displaced as a result of climate change stay within the border of their country of origin, i.e. migrate internally<sup>82</sup>. Since crossing the international borders is considered as a required criterion for refugee recognition, internal climate-induced migration does not fit the definition of refugee and can

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<sup>80</sup> Ibid., p.32.

<sup>81</sup> MCADAM, Jane. 2009. *From Economic Refugees to Climate Refugees? Review of International Refugee Law and Socio-Economic Rights: Refuge from Deprivation.* Melbourne Journal of International Law, vol. 31, pp. 579. Available at: <https://classic.austlii.edu.au/au/journals/MelbJIL/2009/31.html> [Accessed 20 May 2024]

<sup>82</sup> KOHONEN, Simo. “Talking about climate refugees is misleading.” International Organization for Migration (IOM), 2021. Available at: <https://finland.iom.int/blogs/talking-about-climate-refugees-misleading#:~:text=Our%20idea%20of%20a%20climate,a%20basis%20for%20refugee%20status> [Accessed 20 May 2024]

be more appropriately described as internal “environmentally induced migration” or internal “forced environmental migration”<sup>83</sup>.

Researcher Matthew Scott explains the protection gaps in the “climate refugee” definition referring to the “persecution” element of the legal understanding of a term refugee. According to his research, natural disasters and climate change does not usually cause the experience or fear of being persecuted, and even if this experience or fear is presented, it does not correlate with the reasons stated in the 1951 UN Refugee Convention.<sup>84</sup> The persecution concept is built on two main criteria – it requires a human actor and the government’s will to cause harm, and to be a part of a particular group (based on race, nationality, religion, membership of a particular social group or political opinion.)<sup>85</sup>. However, climate disasters are caused by the forces of nature, and governments are expressing a strong will to protect their citizens from natural hazards in most cases. In this regard, the author recommends not to use the term “climate refugees” to avoid any possible policy concerns.

However, some people argue that environmental change caused by governments can fit the definition of persecution.<sup>86</sup> Persecution is usually defined as the systematic mistreatment of an individual or group by another individual or group, based on the grounds of race, religion, political opinion, nationality, or membership in a particular social group. Such mistreatment involves actions that might cause severe harm or suffering, either mentally or physically. At the same time, climate change and environmental degradation might cause severe harm to individuals and local communities, as well as negatively affect their health, living conditions, lead to destruction of lands, and damage the whole infrastructure in a state<sup>87</sup>. In such situations governments can be involved as responsible

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<sup>83</sup> PANDA, Architesh. “*Climate Refugees: Implications for India.*” *Economic and Political Weekly*, vol. 45, no. 20, 2010, pp. 76–79. Available at: <http://www.jstor.org/stable/27807029> [Accessed 21 May 2024]

<sup>84</sup> SCOTT, Matthew. “*Climate Change, Disasters, and the Refugee Convention.*” Cambridge University Press, vol. 2, no. 1, 2020, 184 pages. Available at: <https://doi.org/10.1017/9781108783457> [Accessed 22 May 2024]

<sup>85</sup> EUROPEAN MIGRATION NETWORK. “Persecution.” *European Migration Network Asylum and Migration Glossary*. Available at: [https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/persecution\\_en](https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/persecution_en) [Accessed 22 May 2024]

<sup>86</sup> BETTS, Alexander. “*Survival Migration: Failed Governance and the Crisis of Displacement.*” Cornell University Press, 2013. Available at: <http://www.jstor.org/stable/10.7591/j.ctt32b5cd> [Accessed 22 May 2024]

<sup>87</sup> GEMENNE, François, ZICKGRAF, Caroline, HUT, Elodie, and CASTILLO BETANCOURT, Tatiana. *Forced Displacement Related to the Impacts of Climate Change and Disasters: 70th Anniversary of the 1951 Refugee Convention*. The Hugo Observatory, University of Liège, Belgium, June 2021, 25 pages.

actors which cause environmental change by changing certain policies or acting in a negligible way. For example, unregulated pollution or deforestation might disproportionately affect people on certain territories<sup>88</sup>. This is also evident in cases where indigenous people are forced to leave their habitual residence due to extractive activities sanctioned by governments, which leads to significant environmental degradation and cultural loss<sup>89</sup>. Besides, international legal frameworks can be interpreted in a way which involves environmental persecution, recognizing severe environmental harm as a violation of basic human rights and justifying granting a refugee status when such harm results from persecution<sup>90</sup>. Therefore, climate change caused by governmental policies aligns with the broader understanding of persecution as systematic and severe mistreatment, especially when it targets specific groups.

Another part of the argument is that climate change is a priori linked to the societal, economic, and political factors. However, giving the refugee status to persons displaced because of climate change might increase the number of refugees and devalue the legal protection of refugees<sup>91</sup>.

Since the universally recognized definition of a refugee is present in the UN Refugee Convention 1951, the elements and grounds of the definition must be analysed and compared to establish clarity. One of the reasons of why climate migrants do not fit into the definition of a refugee under the Convention is the absence of persecution. In accordance with the UN Refugee Convention 1951, in order to be recognized as a refugee and be granted a refugee status, an individual needs to be persecuted or own a well-founded fear of persecution.

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<sup>88</sup> BACHELET, Michelle. *Global Update at the 42nd Session of the Human Rights Council*. Geneva: United Nations Human Rights Council, 9 September 2019. Available at: <https://webtv.un.org/en/asset/k1t/k1tbo92vvs> [Accessed 23 May 2024]

<sup>89</sup> Amnesty International. *Amnesty International Report 2020/21: The State of the World's Human Rights*. London: Amnesty International, 2021, 407 p. Available at: <https://www.amnesty.org/en/wp-content/uploads/2021/06/English.pdf> [Accessed 24 May 2024]

<sup>90</sup> ANDERSON, Adrienne, FOSTER, Michele, LAMBERT, Helene, MCADAM, Jane. *Imminence in Refugee and Human Rights Law: A Misplaced Notion for International Protection*. *International and Comparative Law Quarterly*, vol. 68, no. 1, 2019, pp. 111-140. Available at: <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/imminence-in-refugee-and-human-rights-law-a-misplaced-notion-for-international-protection/A5F656A087458C1200272A2616F9BAEB> [Accessed 24 May 2024]

<sup>91</sup> JASWAL, Paramjit S., and JOLLY Stellina. "CLIMATE REFUGEES: CHALLENGES AND OPPORTUNITIES FOR INTERNATIONAL LAW." *Journal of the Indian Law Institute* 55, no. 1, 2013, pp. 45–58. Available at: <http://www.jstor.org/stable/43953626> [Accessed 24 May 2024]

However, in most cases, governments and state authorities are willing to protect their citizens from the destructive effects of climate change by implementing various policies and approaches, such as reducing greenhouse gas emissions, addressing rising sea levels, switching to renewable energy sources, etc.<sup>92</sup>.

The well-founded fear of being persecuted, or persecution itself for certain grounds, which is essential in defining refugees, are not usually present among people displaced due to environmental change. Moreover, grounds for persecution listed in the UN Refugee Convention 1951 and analysed in detail in Chapter 1 are not correlated with the root causes of the climate-induced displacement. The reasons of persecution are religion, race, nationality, political opinion, or membership of a particular social group. Meanwhile, climate-induced migration occurs due to severe weather conditions and negative effects of climate change. The refugee definition provided by the Convention is meant to address discrimination, ill-treatment, and violation of human rights in situations where groups or individuals are not able to receive protection from their governments. Meanwhile, most of environment migrants are forced to leave their residences due to destructive effects of climate change such as degradation of lands, rising sea levels, loss of livelihoods and others. These situations are not included in the international legal refugee frameworks as reasonable grounds for granting a refugee status. Therefore, most climate migrants are not falling into the category of people who are persecuted based on race, religion, nationality, political opinion, or membership of a particular social group. Such distinction leads to the gap in the international law, where climate migrants lack protection established for refugees<sup>93</sup>.

The Parliamentary Assembly of The Council of Europe raised the concern about the absence of the unified legal terminology which would address the issue of human mobility caused by environmental disasters and climate change<sup>94</sup>. Due to the absence of the unified

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<sup>92</sup> IPCC. *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. [online] Available at: <https://www.ipcc.ch/report/ar6/wg3/> [Accessed 25 May 2024]

<sup>93</sup> GUNES, Burak, and CELENK, Bengu. "The Impasse of International Law on Climate-Induced Migration: Recent Developments and the United Nation's January 2020 Decision on Climate Refugees." *Insight Turkey*, vol. 23, no. 3, 2021, pp. 209-232. Available at: <https://doi.org/10.25253/99.2021233.11> [Accessed 20 May 2024].

<sup>94</sup> Council of Europe: Parliamentary Assembly, *Environmentally induced migration and displacement: a 21st century challenge*, 23 December 2008, Doc. 11785. Available at: <https://www.refworld.org/docid/49997bbb0.html> [Accessed 25 May 2024]

official definition of a “climate refugee”, many scholars have provided their own definitions. According to the UNEP researcher El-Hinnawi,

*“Environmental refugees are those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life [sic]. By “environmental disruption” in this definition is meant any physical, chemical, and/or biological changes in the ecosystem (or resource base) that render it, temporarily or permanently unsuitable to support human life”<sup>95</sup>.*

El-Hinnawi identified three main types of so-called environmental refugees, including people who are permanently relocated due to natural or anthropogenic disaster, people who are permanently displaced due to drastic environmental changes, such as dams’ constructions, and people who decided to migrate due to deterioration of environmental conditions<sup>96</sup>. Another researcher Jacobson J. L. defines “environmental refugees” as “those displaced temporarily due to local disruption such as an avalanche or earthquake; those who migrate because environmental degradation has undermined their livelihood or poses unacceptable risks to health; and those who resettle because land degradation has resulted in desertification or because of other permanent and untenable changes in their habitat”<sup>97</sup>.

In accordance with the analysis of the UN Refugee Convention 1951 provided by Phillip Dane Warren, the vast majority of climate migrants will not fit the definition of a refugee and will not be able to get an asylum in another state, meaning they will end up in a situation where their rights and safety are not protected by the global community<sup>98</sup>. Therefore, the outdated definition of a refugee does not provide any legal ground for other

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<sup>95</sup> EL-HINNAWI, E. *Environmental Refugees*. Nairobi: United Nations Environment Programme (UNEP), 1985, p. 4.

<sup>96</sup> BATES, Diane C. “Environmental Refugees? Classifying Human Migrations Caused by Environmental Change.” *Population and Environment*, vol. 23, no. 5, 2002, pp. 465–77. *JSTOR*. Available at: <http://www.jstor.org/stable/27503806> [Accessed 1 June 2024]

<sup>97</sup> RAMLOGAN, Rajendra. “*Environmental Refugees: A Review*.” *Environmental Conservation*, vol. 23, no. 1, 1996, pp. 81–88. *JSTOR*. Available at: <http://www.jstor.org/stable/44519184> [Accessed 1 June 2024]

<sup>98</sup> WARREN, Phillip Dane. “*FORCED MIGRATION AFTER PARIS COP21: EVALUATING THE ‘CLIMATE CHANGE DISPLACEMENT COORDINATION FACILITY*.” *Columbia Law Review*, vol. 116, no. 8, 2016, pp. 2103–44. *JSTOR*. Available at: <http://www.jstor.org/stable/44028186> [Accessed 1 June 2024]

categories of refugees and needs to be broadened to provide a more comprehensive coverage of the status of asylum seekers.

All the above-mentioned definitions are widely used by scholars and international actors, however none of the above-mentioned definition has legal power to establish legal status and international legal framework for assisting climate refugees and climate migrants. These definitions are meant to identify the root causes of climate displacement, and therefore can be used by governing bodies for attempts of minimising these causes through applying efficient strategies and addressing the migration. Being able to identify people suffering from climate change and forced to leave their countries of origin helps global organisations, policymakers, and international community to provide necessary protection and assistance to the climate-induced migrants. Despite the undoubtful importance of the existing terminology, it is necessary to provide legal clarity and to promote the idea of establishing universal legal definition for people seeking for an asylum as a result of climate change or environmental degradation.

## **2.2 Regional and International mechanisms**

Despite the absence of universal binding definition of climate refugees, there are examples of the expanded refugee definition locally accepted in some regions on the governmental or intergovernmental level. Some countries and regions, which experience climate change and must deal with growing migration of local population, adopted legal documents which broadened the canonical refugee definition and expended refugee status.

For example, the 1969 OAU Refugee Convention<sup>99</sup> expands the term refugee by including additional elements of the definitional grounds, such as “events seriously disturbing public order”<sup>100</sup>. In accordance with the Section 2 Article 1 of the 1969 OAU Refugee Convention, a refugee is:

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<sup>99</sup> Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention")*, 1001 U.N.T.S. 45, 10 September 1969. Available at: <https://www.refworld.org/legal/agreements/oau/1969/en/13572> [Accessed 8 June 2024]

<sup>100</sup> Regional Refugee Instruments & Related, *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, -, 22 November 1984. Available at: <https://www.refworld.org/legal/resolution/rri/1984/en/64184> [Accessed 8 June 2024]

*" person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality."*

The category of events which might seriously disturb public order is quite broad and might include climate change and natural cataclysms, which allows to use the legal implications of the Convention in cases of dislocation caused by climate change. Since climate change is perceived by many international actors as an important contributor to the disruption of livelihoods of various communities and whole nations, climate-induced migration, or disaster displacement, might potentially fall under the definition of a refugee provided by the 1969 OAU Refugee Convention. For example, environmental disasters such as storms, floodings, land deterioration might lead to social and political instability, what causes many people to leave their natural habitats and seek for safer places<sup>101</sup>. Moreover, negative effects of climate change can be both primary and secondary factors of persons displacement, therefore shall be considered seriously in certain cases.

In accordance with the Legal Considerations on Conflict and Famine, the UNCHR Guidance, the 1969 OAU Refugee Convention significantly broadens the refugee definition established in the UN Refugee Convention 1951<sup>102</sup>. This helps to provide international protection not only to asylum seekers falling under the conventional refugee definition, but also for people who forced to leave their lands due to conflict (public order disruption) and famine caused by other factors which are not mentioned in the UN Refugee Convention 1951.

Another regional agreement called the 1984 Cartagena Declaration offers an extended definition of a refugee as well, stating that refugees might be defined as:

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<sup>101</sup> HANSEN-LOHREY, Cleo. *Assessing The 1969 OAU Convention In The Context Of Disasters, Environmental Degradation And The Adverse Effects Of Climate Change*. University of Tasmania, 2023, 74 pages. Available at: <https://disasterdisplacement.org/resource/unhcr-legal-and-protection-policy-research-series-the-1969-oau-convention/> [Accessed 5 June 2024]

<sup>102</sup> UNHCR, *Legal considerations on refugee protection for people fleeing conflict and famine affected countries*, 5 April 2017. Available at: <https://www.refworld.org/policy/legalguidance/unhcr/2017/en/116529> [Accessed 5 June 2024]



*“persons who have fled their country because their lives, security or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”*<sup>103</sup>.

Therefore, the main elements of the definition of a refugee established in the 1984 Cartagena Declaration are being outside a country of origin, the presence of any situational event mentioned in the definition, such as conflicts, violence, and aggression, and having a life, freedom, or security under the threat.

In accordance with the 2020 UNCHR Legal Considerations, the 1969 OAU Refugee Convention and the 1984 Cartagena Declaration play important role in extending the conventional definition of a refugee and providing support and protection to more people who fit regional refugee definition<sup>104</sup>. The 2020 UNCHR Legal Considerations mention that disasters and hazards can cause disruptions of social, political, economic and environmental conditions, therefore might be considered as “events which seriously disturb public order”. Such events shall be destructive enough and impose harm on people to force individuals or local communities to leave their habitual residence and seek protection abroad. Moreover, even if some of such event have local character and happen only in one part of a country, the effect of such events might be extremely dangerous and spread everywhere or affect local infrastructure and livelihoods, therefore people cannot be forced to move to another part of the state and shall be considered as refugees if they fit the necessary criteria<sup>105</sup>.

Despite the absence of universal definition of a climate refugee, some countries tried to establish their own terminology on climate migration and provide an assistance to asylum seekers. The Australian legal scholar Jane McAdam mentions in her research that such countries as Finland and the UK proposed to recognize as environmental migrants those people who had to relocate as a result of natural disasters and provide them with the

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<sup>103</sup> Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, **Cartagena Declaration on Refugees**, 22 November 1984. Available at: <https://www.refworld.org/docid/3ae6b36ec.html> [Accessed 5 June 2024]

<sup>104</sup> United Nations High Commissioner for Refugees (UNHCR). *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters*. Geneva: UNHCR, 2020. Available at: <https://www.refworld.org/docid/5f75f2734.html> [Accessed 5 June 2024]

<sup>105</sup> *Ibid*, p. 10

humanitarian assistance<sup>106</sup>. This initiative was not successful due to several reasons, including the lack of relevant legal instruments and uncertainty of the other states regarding the need to provide an assistance for climate refugees. However, the national legislation of some countries, including Finland, Sweden, and Argentina, includes laws which offer protection to people who are not able to return to the country of their origin due to environmental disaster or catastrophe<sup>107</sup>. These efforts have not led to the establishment of an international climate refugee definition but have significantly contributed to the field of legal regulation environmental migration.

Besides the above-mentioned conventions, other documents also establish rules and principles aimed at providing regional support and assistance to people displaced by climate change. In accordance with the Article 16 of The IGAD Free Movement Protocol in East Africa, persons affected by a disaster shall be accepted by another Member State of the Protocol in accordance with the national law of such member state<sup>108</sup>. Despite the Protocol not explicitly establishing a new category of refugees such as climate refugees, it provides a crucial legal framework for protecting rights and freedoms of persons displaced by climate change.

In order to avoid the use of the term “climate refugees”, the term “internally displaced people” (IDPS) was proposed to be used by various NGOs to define persons displaced within the borders of their country as a result of violence, conflict, persecution or disaster<sup>109</sup>. To address the lack of the definition of “climate refugee”, many regional documents refer to climate displacement and provide support and assistance for persons internally displaced as a result of natural disaster. For example, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, also known as the Kampala

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<sup>106</sup> MCADAM, J. “*Climate Change, Forced Migration, and International Law*”, Oxford University Press, 2012, pp. 100-118. Available at: <https://www.ohchr.org/sites/default/files/documents/issues/climatechange/cfi-hrc-53-session/submissions/2022-11-28/Jame-McAdam-5.pdf> [Accessed 8 June 2024]

<sup>107</sup> SCOTT, Matthew, and GARNER, Russell. *Nordic Norms, Natural Disasters, and International Protection*. Raoul Wallenberg Institute of Human Rights and Humanitarian Law, 2022. Available at: <https://rwi.lu.se/publications/nordic-norms-natural-disasters-and-international-protection/> [Accessed 8 June 2024]

<sup>108</sup> Economic Community of West African States (ECOWAS), *Protocol Relating to Free Movement of Persons, Residence and Establishment*, 29 May 1979, A/P 1/5/79. Available at: <https://www.refworld.org/docid/492187502.html> [Accessed 8 June 2024]

<sup>109</sup> United Nations High Commissioner for Refugees (UNHCR). *Who we protect: Internally displaced people*, 2023. Available from: <https://www.unhcr.org/about-unhcr/who-we-protect/internally-displaced-people> [Accessed 8 June 2024]

Convention, states that any person evacuated as a result of natural or human caused disaster has a right to be protected against arbitrary displacement<sup>110</sup>. The Kampala Convention has become the first official document to legally assist and protect IDPs. In accordance with the Article 4 of the Kampala Convention, IDPs shall be protected from the arbitrary displacement<sup>111</sup>. Rules and principles established by the Kampala Convention created the essential regional legal framework which significantly helped to assist internally displaced persons in Africa forced to leave their habitats due to environmental disasters<sup>112</sup>.

It should also be noted that environmental migration can occur within a country's borders. Internally displaced individuals, including those displaced for environmental reasons, do not fall under the refugee definition because they have not crossed an international border. This thesis, therefore, primarily focuses on individuals who are externally displaced due to environmental factors.

Despite regional conventions and agreements, there are examples of international documents that aim to regulate such category as IDPs. The “Guiding Principles on Internal Displacement” (GPID) issued by the United Nations in 1998 contains the definition of “Internally displaced persons”. In accordance with the article 2 of the Introduction of the GPID, “internally displaced persons are 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”<sup>113</sup>.

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<sup>110</sup> African Union, *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* ("Kampala Convention"), 23 October 2009. Available at: <https://www.refworld.org/docid/4ae572d82.html> [Accessed 10 June 2024]

<sup>111</sup> Ibin, Article 4.

<sup>112</sup> ABEBE, A. M. 2011. *The Kampala Convention and environmentally induced displacement in Africa*. IOM Intersessional Workshop on Climate Change, Environmental Degradation and Migration, 29-30 March 2011, Geneva, Switzerland. Available from: <https://www.iom.int/sites/g/files/tmzbd1486/files/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/climate-change-2011/SessionIII-Paper-Allehone-Mulugeta-Abebe.pdf> [Accessed 10 June 2024]

<sup>113</sup> UN High Commissioner for Refugees (UNHCR), Guiding Principles on Internal Displacement, 22 July 1998, ADM 1.1,PRL 12.1, PR00/98/109. Available at: <https://www.refworld.org/docid/3c3da07f7.html> [Accessed 10 June 2024]

There are multiple definitions, officially accepted and informally used, which identify person's displacement caused by climate change. Climate-induced displacement is recognized by the UN organs, and climate migration is mentioned in the Global Compact for Safe, Orderly and Regular Migration<sup>114</sup>. Besides the definitions provided by regional treaties and agreements there are also international or cross-border projects such as the Nansen Initiative<sup>115</sup> or Pacific Islands forum<sup>116</sup>, which seek to improve situation of climate migrants in certain regions and provide all necessary assistance and protection for them. Another international mechanism which is incorporated by the Inter-Agency Standing Committee (the IASC) called "The IASC Framework on Durable Solutions for Internally Displaced Persons", which involves a wide scope of different international actors in order to cooperate and provide assistance for displaced individuals or groups<sup>117</sup>. The mechanism is also based on a range of principles which are called durable solution and include such solutions as "return" to the place of origin, sustainable integration to a new local society, and settlement at a new place. Another mechanism which is called International Conference on the Great Lakes Region and its two protocols, which include Protocol on the Protection and Assistance to Internally Displaced Persons<sup>118</sup> and Protocol on the Property Rights of Returning Persons accepted in 2006<sup>119</sup>, aimed to secure the Great Lake Region in Africa. The mechanism recognized and ensured rights of displaced persons within the Great Lake Region, such as right for a safe return, right to keep a property or a land in a country of origin after being displaced, right for humanitarian assistance and many other essential rights<sup>120</sup>.

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<sup>114</sup> OHCHR (Office of the United Nations High Commissioner for Human Rights). (n.d.). *Global Compact for Safe, Orderly and Regular Migration*. Available at: <https://www.ohchr.org/en/migration/global-compact-safe-orderly-and-regular-migration-gcm> [Accessed 10 June 2024]

<sup>115</sup> International Organization for Migration. (n.d.). *Nansen Initiative*. Available at: <https://environmentalmigration.iom.int/nansen-initiative> [Accessed 10 June 2024]

<sup>116</sup> Pacific Islands Forum Secretariat. (n.d.). Home. Retrieved April 10, 2024, from <https://forumsec.org>.

<sup>117</sup> Inter-Agency Standing Committee. *"IASC Framework on Durable Solutions for Internally Displaced Persons."*, 2010. Available at: <https://interagencystandingcommittee.org/sites/default/files/migrated/2021-03/IASC%20Framework%20on%20Durable%20Solutions%20for%20Internally%20Displaced%20Persons%20C%20April%202010.pdf> [Accessed 10 June 2024]

<sup>118</sup> International Conference on the Great Lakes Region. *"Protocol on the Protection and Assistance to Internally Displaced Persons."*, 2006. Available at: <https://www.unhcr.org/fr-fr/en/media/international-conference-great-lakes-region-protocol-protection-and-assistance-internally> [Accessed 10 June 2024]

<sup>119</sup> International Conference on the Great Lakes Region. *"Protocol on the Property Rights of Returning Persons."*, 2006. Available at: <https://icglr.org/wp-content/uploads/2022/06/Protocol-on-Property-Rights-of-Returning-Persons.pdf> [Accessed 10 June 2024]

<sup>120</sup> MARTIN, Susan. "Climate Change, Migration, and Governance." *Global Governance*, vol. 16, no. 3, 2010, pp. 397–414. *JSTOR*. Available at: <http://www.jstor.org/stable/29764954>. [Accessed 10 June 2024]

However, despite the above-mentioned regional treaties, conventions, and mechanisms, there is still no clear official internationally accepted definition for climate or environmental refugees (or migrants) provided by international organisations. Moreover, there are legal debates over terminology, criteria for determining eligibility, and the allocation of responsibilities among states for providing protection and assistance to people displaced due to climate change. According to the opinions expressed by legal bodies and international actors, the term “refugee” is not quite applicable to climate-induced displacement due to major limitations of the refugee definition provided by the UN Refugee Convention of 1951 and its 1967 Protocol<sup>121</sup>.

This situation creates a gap in the international law which severely undermines the rights and freedoms of persons displaced as a result of climate change or environmental degradation and minimizes the means of international protections available for them. To change the current situation, appropriate changes should be made by global actors and international organisations, such as creating unified definition and proper terminology to provide protection and assistance to climate migrants, as well as establishing the legal status for environmental migrants and refugees on the global level. Moreover, there is a high demand for an internationally recognised legal framework regarding the problem of climate-induced displacement. The presence of a legal framework would protect the human rights of climate migrants, guarantee access to resources and humanitarian assistance, and help to create a legal status for displaced persons.

### **2.3 The limitations of the refugee definition**

The definition of a refugee established in the UN Refugee Convention 1951 does not include any climate-related elements, what leads to the existing legal gap where, in many cases, climate refugees lack international support and cannot be granted a refugee status. The main problem is, as was stated in previous chapters, that an element of persecution is not based on such ground as climate degradation or environmental disruption. In accordance

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<sup>121</sup> European Parliament. *"The Concept of 'Climate Refugee': Towards a Possible Definition."* EPRS, European Parliamentary Research Service, 2023. Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698753/EPRS\\_BRI\(2021\)698753\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698753/EPRS_BRI(2021)698753_EN.pdf) [Accessed 17 June 2024]

with the research provided by Philipp Thea, the main difference between climate change and persecution is that climate change might happen gradually and predictably, therefore people have a chance to plan their actions and maybe even address such problem<sup>122</sup>. However, it is not always possible to prepare for the climate change, therefore such situation causes problems in categorising environmental migration. At the same time, another problem is the grounds of persecution listed within the conventional definition of a refugee. The nature of climate change and environmental disruption is not discriminative; therefore, climate change impacts do not adequately fit into the refugee definition established by the UN Refugee Convention 1951<sup>123</sup>.

Despite the above-mentioned issues, the international legal juridical system includes a plethora of legal cases wherein climate migrants have pursued asylum or refugee status. For example, a Kiribati citizen applied for a Protection visa in Australia in 2009 due to climate change and rise of sea water in Kiribati and possible disappearance of the state in the future. The applicant also mentioned that livelihoods are destroyed in the country, and it is hard for local communities to survive there. Besides other circumstances, the lack of balanced diet and fresh water severely affected the applicant's health.

Despite the arguments provided by the applicant, the Refugee Review Tribunal of Australia denied granting a Protection visa to the applicant. According to the Tribunal's findings and reasons, "the Tribunal does not believe the applicant fears persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion as required by the Refugees Convention.<sup>124</sup>". In accordance with the statement expressed by the High Court of Australia, the definition of persecution includes such elements as discrimination, serious harm, and motivation of a persecutor committing persecution<sup>125</sup>. Negative impacts of climate change or environmental degradation do not

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<sup>122</sup> PHILIP, Thea. "Climate Change Displacement and Migration: An Analysis of the Current International Legal Regime's Deficiency, Proposed Solutions and a Way Forward for Australia". *Melbourne Journal of International Law*, vol. 19, no. 2, 2018, 639 pages. Available at: <https://classic.austlii.edu.au/au/journals/MelbJIL/2018/22.html#fn60> [Accessed 22 June 2024]

<sup>123</sup> BIERMANN, Frank, and BOAS, Ingrid. "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees." *Global Environmental Politics*, vol. 10, no. 1, 2010, pp. 60–88. Available at: <https://doi.org/10.1162/glep.2010.10.1.60> [Accessed 22 June 2024]

<sup>124</sup> *RRT Case No. 0907346*, [2009] RRTA 1168, Australia: Refugee Review Tribunal, 10 December 2009. Available at: <https://www.refworld.org/jurisprudence/caselaw/ausrrt/2009/en/72145> [Accessed 1 July 2024]

<sup>125</sup> *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225, 233 (Brennan CJ), 257 (McHugh J)

really fit the definition of persecution due to the lack of above-mentioned elements, including the discriminative nature<sup>126</sup>. Therefore, the Tribunal stated that being a member of an environmentally challenging area, such as Kiribati, does not necessarily involve an element of persecution, and therefore this circumstance does not represent a sufficient reason for granting a protection status in Australia. Besides, the Tribunal did not establish a well-founded fear of persecution or oppression.

In another legal case in the Pacific region, the Tuvalu citizens claimed a refugee status in New Zealand due to severe climate conditions in Tuvalu which negatively impact their livelihood but were denied by the New Zealand authorities<sup>127</sup>. The extreme environmental conditions in Tuvalu in complexity with socio-economical struggles and deteriorating livelihoods created the migration pattern where the representatives of the Tuvaluan local communities suffered as a result of climate change<sup>128</sup>.

The applicants mentioned among the evidence they represented in the case, the rising sea levels and its effects, difficulties in growing fruits and vegetables due to environmental changes, the lack of fresh and decent water and safe food and increasing coastal erosion in Tuvalu islands as a main reason for seeking an asylum in New Zealand.<sup>129</sup>

Given the above-mentioned circumstances, the applicants claimed that their safety, and their children's safety, was jeopardised by the environmental degradation and negative impact of climate change in Tuvalu. Besides, the lack of available medical services and the poor quality of medical procedures and facilities in Tuvalu heavily influenced a family decision to move to another country and seek for humanitarian assistance and protection under the international law.

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<sup>126</sup> PHILIP, Thea. "Climate Change Displacement and Migration: An Analysis of the Current International Legal Regime's Deficiency, Proposed Solutions and a Way Forward for Australia". *Melbourne Journal of International Law*, vol. 19, no. 2, 2018, 639 pages. Available at: <https://classic.austlii.edu.au/au/journals/MelbJIL/2018/22.html#fn60> [Accessed 23 June 2024]

<sup>127</sup> AD (Tuvalu) [2014] NZIPT 501370-371

<sup>128</sup> SHAWN, Shen, and BINNS, Tony. "Pathways, Motivations and Challenges: Contemporary Tuvaluan Migration to New Zealand." *Geo Journal*, vol. 77, no. 1, 2012, pp. 63–82. JSTOR. Available at: <http://www.jstor.org/stable/41431191> [Accessed 22 June 2024]

<sup>129</sup> New Zealand Immigration and Protection Tribunal. **AD (Tuvalu) [2014] NZIPT 501370-371**, Decision of 4 June 2014. Available at: <https://climaterightsdatabase.com/ad-tuvalu-v-new-zealand> [Accessed 24 June 2024]

In this particular case, the Immigration and Protection Tribunal of New Zealand stated that due to the exceptional circumstances of humanitarian nature, the applicants have a right to stay in New Zealand.<sup>130</sup> The Tribunal's positive decision was based on accepting several credible pieces of evidence from the applicants, including the severe harm which the applicant's family experienced in Tuvalu. However, despite all the evidence of serious harm and risks connected to the safety and health of the applicants, the Tribunal did not find appropriate ground for granting the refugee status to the applicants in this case. The Tribunal mentioned that under the UN Refugee Convention 1951 a refugee status can be granted to asylum seekers who are able to prove that their sufferings arose from such reasons as their political opinions, religion, race, nationality, or membership of a certain social group. In the case of the Tuvalu's applicants, the suffering of the applicants was caused by climate change, therefore the element of persecution mentioned as one of the main criteria for granting refugee status was absent. Besides, the Tribunal did not find credible evidence proving that the Tuvaluan government failed to provide assistance and protection for the Tuvaluan citizens suffering from the negative consequences of climate change, therefore another criterion of a refugee definition, a lack of protection from the country of origin, also was not determined among the evidence provided by the applicants.

In her analysis regarding the Tuvaluan case professor Jane McAdam notices that the element of persecution, which is required by the UN Refugee Convention of 1951 for granting a refugee status, traditionally includes such parameters as human rights violation caused by human activities or specific actors, as well as discrimination against certain race, social group, or people sharing certain beliefs or political opinions<sup>131</sup>. Meanwhile, climate change mostly correlated with environmental factors and does not affect only certain categories of population. Climate change and environmental degradation does not involve a specific persecutor, therefore, to constitute a fear of persecution and harm caused by persecution in cases involving climate migrants is quite difficult. However, the climate change and environmental degradation might become secondary causes of human rights violations, such as discrimination against certain groups or communities, gender-based

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<sup>130</sup> *Ibid.*

<sup>131</sup> MCADAM, Jane. *The emerging New Zealand jurisprudence on climate change, disasters and displacement*, Migration Studies, vol. 3, Issue 1, 2015, pp. 131–142. Available at: <https://doi.org/10.1093/migration/mnu055> [Accessed 27 June 2024]



violence, and discrimination in providing assistance and protection, which potentially leads to raising a refugee claim<sup>132</sup>.

While the Tribunal acknowledges the relevance of climate change and its negative impacts in Tuvalu region to the case, this factor on its own does not represent a significant reason for granting a refugee status or protection status in New Zealand according to the legal practice<sup>133</sup>. The outcome of the case does not illustrate any precedential ground for providing the same international status and protection for climate migrants as for refugees, highlighting the limitations of existing legal protection established by the international rules for people displaced because of climate change or environmental degradation<sup>134</sup>.

The element of persecution, which is required by the conventional definition of a refugee, complicates further the procedure of granting a refugee status to people displaced by climate change. The traditional refugee definition provided in the UN Refugee Convention 1951 involves the necessity for asylum seekers to be under sufficient threat of harm or violence to gain an international refugee status, which creates a problem for climate migrants who claim an asylum due to climate-induced displacement. In the legal case of *Ioane Teitiota v. Chief Executive of Ministry of Business, Innovation and Employment of New Zealand*, the New Zealand authorities interpreted this principle through the prism of persecution and did not find evidence proving the potential threat of serious harm for the applicant in the above-mentioned legal case. However, many researchers in the field of human rights and refugee's rights find the criterion of "persecution" quite ambiguous, which makes it almost impossible to apply such concept to climate-induced migration. Although the harm caused by environmental degradation might be systemic and repetitive, it does not necessarily involve a human actor to cause such harm or to possess a threat for other people. Therefore, the decision of the Tribunal and analogous decision might create a precedential pattern in the international law where asylum seekers, including their rights and freedoms,

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<sup>132</sup> Ibid, p.140.

<sup>133</sup> BURSON, B. L. (Member), and CURTIS, C. "*AD (Tuvalu)*," Immigration and Protection Tribunal New Zealand at Auckland, 2014, NZIPT 501370-371. Available at: [https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2014/20140604\\_2014-Cases-501370-371\\_decision-1.pdf](https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2014/20140604_2014-Cases-501370-371_decision-1.pdf) [Accessed 2 July 2024]

<sup>134</sup> FARQUHAR, Harriet. "*Migration with Dignity*": Towards a New Zealand Response to Climate Change Displacement in the Pacific. *Victoria University of Wellington Law Review*, vol. 46, no. 1, 2015, p. 291-56. Available at: <https://ojs.victoria.ac.nz/vuwlr/article/view/4936> [Accessed 2 July 2024]

are not protected by the international community from the violent and harmful nature of climate change<sup>135</sup>.

Besides the international attention and implication of human rights, the case raised several legal challenges. The case of *Ioane Teitiota v. Chief Executive of Ministry of Business, Innovation and Employment of New Zealand* correlates with the issues of climate changes and refugees' rights. The situation illustrates a complex nature of climate-induced migration and challenges regarding legal status of people displaced because of climate change. The existing legal framework, including the UN Refugee Convention of 1951 and its 1967 Protocol, does not fully cover and protect climate migrants, therefore their position in international community is vulnerable due to the lack of protection of their rights<sup>136</sup>. The decision made by the Court, the Tribunal, and the UN Committee contains valuable insights and represents the obligation of the state to provide an adequate protection for people affected by natural disasters and leads to developing international legal rules and principles for assisting climate migrants<sup>137</sup>. Kenneth R. Weiss, a winner of the Pulitzer Prize, notices that many individuals from countries whose systems offer limited protection often face various risks, and if the global community will keep rejecting their responsibility to protect vulnerable population, these people will end up in an unpleasant and dangerous situation<sup>138</sup>.

The circumstances of the case underscore the high number of similarities between a refugee and a climate migrant. Both their rights are systematically violated, they lack protection from their countries of origin, and they are under risk of severe harm. The main difference between the experience of a refugee and a climate migrant is the international protection and legal recognition given to a refugee seeking for an asylum, which is not so easily granted to climate migrants at the same time. Therefore, to provide a legal status for

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<sup>135</sup> BERHMAN, Simon, and KENT, Avidan. *"The Teitiota Case and the Limitations of the Human Rights Framework."* QIL, Zoom-in, vol. 75, 2020, pp. 25-39. Available at: <https://www.qil-qdi.org/the-teitiota-case-and-the-limitations-of-the-human-rights-framework/> [Accessed 3 July 2024]

<sup>136</sup> MARTIN, Susan. *"Climate Change, Migration, and Governance."* Global Governance, vol. 16, no. 3, 2010, pp. 397–414. Available at: <http://www.jstor.org/stable/29764954> [Accessed 3 July 2024]

<sup>137</sup> RIVE, Vernon. *"Climate Refugee, Protected Person, and Complementary Protection Claims Under the Microscope of New Zealand's Immigration and Protection Tribunal"* Australia Environment Review, vol. 29, no.9, 2014, 270-274. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2830336](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2830336) [Accessed 4 July 2024]

<sup>138</sup> WEISS, Kenneth R. *"The making of a Climate Refugee"* Foreign Policy, 2015. Available at: <https://foreignpolicy.com/2015/01/28/the-making-of-a-climate-refugee-kiribati-tarawa-teitiota/> [Accessed 4 July 2024]

climate migrants along with the international support and protection, it is necessary to expand the international legal framework and broaden the traditional refugee definition by including climate-related factors to the concept of persecution<sup>139</sup>.

The researcher Sarah M. Munoz challenges the definition of “climate refugees” referring to the politicization of the term and negative narratives which are associated with this refugee movement, difficulties related to the protection of such a group, and a question of choice<sup>140</sup>. According to Munoz, the “climate refugee” concept portrays persons displaced as a result of climate change both as victims and security threats, which damages the image of climate refugees and affects the way they are treated. The author argues that the conceptualisation of “climate refugees” through an institutional and technocratic perspective only reflects the colonial mindset and reduces the global responsibility to protect people displaced due to environmental change, as well as the responsibility to mitigate the negative effects of climate change itself.

Carol Farbotko and Heather Lazrus in their research about “climate refugees” mention that such terminology might be perceived as a label which undermines the strength and resilience of a community<sup>141</sup>. The article states that many islanders who suffered as a result of climate change prefer to be called migrants and avoid the simplicity of being identified as “helpless victims” (refugees). The author claims that climate refugee discourse is based on the idea of closeness of people and nature, where indigenous populations from developing countries are in danger. This concept leads to an increase in social inequality, marginalisation, and the formation of poor perceptions of the persons displaced as a result of climate change, and politicization of the problem of climate migration<sup>142</sup>.

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<sup>139</sup> HAN, Jenny, and KURAS, Amanda. *Climate Change and International Law: A Case for Expanding the Definition of "Refugees" to Accommodate Climate Migrants*, 1 Fordham Undergrad. L. Rev., 2019. Available at: <https://research.library.fordham.edu/fulr/vol1/iss1/6> [Accessed 5 July 2024]

<sup>140</sup> MUNOZ, SM. *Environmental Mobility in a Polarized World: Questioning the Pertinence of the "Climate Refugee" Label for Pacific Islanders*. J Int Migr Integr. 2021;22(4):1271-1284. doi: 10.1007/s12134-020-00799-6. Epub 2021 Jan 12. PMID: 33456399; PMCID: PMC7802811.

<sup>141</sup> FARBOTKO, Carol and LAZRUS, Heather. “*The First Climate Refugees? Contesting Global Narratives of Climate Change in Tuvalu.*” Global Environmental Change, vol. 22, no. 2, 2012, pp. 382-390. Available at: <https://doi.org/10.1016/j.gloenvcha.2011.11.014> [Accessed 5 July 2024]

<sup>142</sup> BETTINI, Giovanni. “*Climate Barbarians at the Gate? A Critique of Apocalyptic Narratives on 'Climate Refugees.'*” Geo forum, vol. 45, 2013, pp. 63-72. Available at: <https://doi.org/10.1016/j.geoforum.2012.09.009> [Accessed 5 July 2024]

The expansion of the definition of a refugee might lead to the increase in number of existing refugees, what might negatively affect the capacity of states to assist such refugees seeking for the international support. Moreover, this situation might negatively affect conventional refugees as well<sup>143</sup>. Providing more support and more protection to the persons displaced because of climate change might cause the lack of protection and assistance given to the traditional refugees which already defined by the 1951 UN Refugee Convention. Another significant problem is the way of assisting climate refugees, which differs from protection and assistance offered to the traditional refugees. As Susann Martin notices in her research, in order to properly assist environmental refugees, it is required from international actors to develop specific policies and implement them accordingly<sup>144</sup>. Such situations create a necessity to expand currently existing policies and legal frameworks, which can be quite complex and resource intensive.

In conclusion, while it is crucial to recognize and address the impacts of climate change on human displacement, the solution might not lie in expanding the refugee definition under the 1951 Refugee Convention. Instead, a more effective approach could involve developing new legal instruments and frameworks specifically tailored to address climate-induced displacement, ensuring that both traditional refugees and those displaced by climate change receive the appropriate protection and support they need.

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<sup>144</sup> MARTIN, S., "*Climate Change, Migration, and Governance*," *Global Governance*, vol. 16, no. 3, 2010, pp. 397–414. Available at: <http://www.jstor.org/stable/29764954> [Accessed 5 July 2024]

## Conclusion

Climate change and environmental migration represent a global threat for the whole international community. Climate change might cause negative effects, which lead to increase of poverty, hunger, social and economic disruption, lack of food and fresh water, destruction of biodiversity, loss of infrastructure, and environmental migration. Climate-induced migration is a relatively new phenomenon for the existing international legal framework; therefore, it lacks sufficient international regulations. Moreover, there is no legal ground behind the definition of climate refugees, i.e. persons displaced because of environmental degradation. In accordance with the UNHCR, climate refugees (migrants) are displaced persons in the context of natural disasters or climate change. The lack of officially recognised terminology and unified definition which would establish a status of a “climate refugee” might lead to the lack of international support, cooperation and assistance for environmental migrants and climate refugees.

This paper introduces the concept of climate refugees and climate migrants and how they are represented under the international law. The absence of a universal definition of climate refugees (migrants) indicates the intensity of scholarly debate and shows the necessity of adopting a unified terminology, which could be beneficial for people displaced as a result of climate change. The research illustrates the need to accept a unified terminology which could provide policymakers and scholars with accurate data and help climate migrants to get access to their rights, humanitarian aid and international support.

At the moment, the definition of a refugee established by the UN Refugee Convention 1951 and its 1967 Protocol does not cover climate-induced migration and does not create a legal condition for providing a refugee status to environmental migrants or people displaced by climate change. Current international legislation is still quite limited and might only be applied in certain cases. However, existing regional frameworks, such as the OAU African Convention and the Cartagena Declaration, and legal cases, particularly the case of *Ioane Teitiota v. Chief Executive of Ministry of Business, Innovation and Employment of New Zealand*, prove that there is still a possibility to grant a refugee status for an individual or group forced to leave their habitual residence due to environmental degradation or due to the negative effects of climate change. The above-mentioned regional

documents aim to extend the conventional definition of a refugee by adding the additional criteria to it and allowing more people to seek refugee status abroad. By granting refugee status for such categories of asylum seekers, regional legislatures and law makers create precedents which prove the necessity of providing assistance and support to people displaced by environmental factors.

Despite growing recognition of the need to expand the refugee definition to encompass climate-induced displacement, significant barriers persist due to institutional inertia, political resistance, and the complexities of integrating environmental considerations into existing legal frameworks. As a result, addressing the plight of climate refugees requires not only legal reform but also broader shifts in policy, governance, and international cooperation to adapt to the changing nature of displacement in a warming world<sup>145</sup>.

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<sup>145</sup> ZETTER, Roger. “*Protecting People Displaced by Climate Change: some conceptual challenges*”, in: J. McAdam (ed.). *Climate Change and Displacement: multidisciplinary perspectives*, Oxford: Hart Publishing, 2010, pp. 131–150. Available at: [https://www.researchgate.net/publication/281228848\\_Protecting\\_people\\_displaced\\_by\\_climate\\_change\\_some\\_conceptual\\_challenges](https://www.researchgate.net/publication/281228848_Protecting_people_displaced_by_climate_change_some_conceptual_challenges) [Accessed 8 July 2024]

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## Summary

The thesis concentrates on examining the implications of climate migration, specifically within the context of the international law and climate refugees. The phenomenon of climate-induced migration has a long history and represents a serious threat for millions of people. Many individuals are forced to leave their natural habitats to escape natural disasters or negative effects of climate change. The thesis analyses the traditional and evolving terms and definition of a refugee within the context of climate change and climate-induced displacement. Besides, various international and regional legal frameworks were examined, including the UN Refugee Convention 1951, to find possible implications of such migration and highlight the existing gaps in the international law.

The first chapter of the thesis focuses on the evolution of the definition of a refugee, its historical aspect and current implementation in the international legal system. The chapter also explores the criteria listed in the refugee definition, which do not include elements related to climate change. Limited scope of the refugee definition creates legal clarity for asylum seekers who fall under the above listed criteria, however, at the same time it excludes climate migrants from the opportunity to use international protection.

In the second chapter the definitions of a refugee, climate refugee, environmental migrant, and internally displaced people are critically compared in order to identify differences and similarities. Various international and regional mechanisms, including legal cases, are used for completing such comparison which represents the effort made by international and regional actors and governments to address environmental migration and provide protection to the persons displaced by climate change.

In summary, this paper examines the phenomena of climate migration and explores how it is incorporated into the international law system. Moreover, the evidence of an existing gap in international law highlights the necessity of the international society to assist and protect climate refugees. Therefore, future research should emphasize strategies for developing existing rules and mechanisms and broadening international norms in order to grant legal status to climate refugees.