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Research Article

Climate change and forced migration

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Abstract

Climate change is increasingly recognized as a significant driver of migration patterns worldwide. As the global temperatures rise, extreme weather events become more frequent, leading to disruptions in livelihoods displacement, and migration. Every day, climate change becomes a more urgent economic, social and existential threat to countries and their people. Climate changes are becoming more and more evident every day, a factor that undoubtedly directly or indirectly affects the displacement of populations. This article provides answers to basic questions starting with how, and where climate change triggers migration and displacement, the second question is if we have a definition for the climate migration, or climate refugee, can they have protection from the Convention relating to the Status of Refugees and the last analysis is the inadequacy of the protection afforded by international law and European Union law and the Albania Legislation to individuals who leave their country of origin for reasons related to environmental issues. The methodology used to answer the questions of this paper includes desk review on existing literature, legal texts, reports from international organizations, legal framework regulating climate migration rights and the decision of the UN Human Rights Committee (HRC) regarding the "climate refugees", the case of Teitiota v New Zealand.

Keywords: Migration, Legal framework, international law, European framework, Climate refugee, Albania legislation, Human Right Committee.

1. Introduction

Every day, climate change becomes a more urgent economic, social and existential threat to countries and their people. As the global temperatures rise, extreme weather events become more frequent, leading to disruptions in livelihoods displacement, and migration. Climate change-related displacement — the forced movement of individuals and communities due to the adverse effects of climate change — is one of the most pressing and potentially existential challenges of the twenty-first century

(Kiri, 2023). Every day, climate change becomes a more urgent economic, social and existential threat to countries and their people, a factor that undoubtedly directly or indirectly affects the displacement of populations. Its catastrophic consequences are capable of posing a serious threat to the enjoyment of fundamental human rights. It is very important to understand the intricate relationship between climate change and migration because it is crucial for developing effective policies and interventions to support affected populations. In legal terms, there is no such thing as a 'climate change refugee'. Although international law provides no definition for a climate migrant, climate induced migration, environment refugee, all of this definition falls within the sub-category of environmental migration. Proposals to expand the Refugee Convention to protect people who move across borders due to environmental and climate change factors have been discussed extensively at the international level. The Refugee Convention was not drafted with environmental degradation in mind. There does not seem to be enough political momentum to overcome the existing hurdles to apply the convention in this context or to develop a new Convention on the protection of 'climate refugee.' A very important part of the analysis in this paper will be devoted to the International and European legal protection of climate migrants, as well as the Albania legislation. Human rights law has expanded States' protection obligations beyond the 'refugee' category, to include (at least) people at risk of arbitrary deprivation of life, torture, or cruel, inhuman or degrading treatment or punishment. Those displaced by climate change may find protection from the obligations deriving from human rights law under the principles of *non-refoulement*. The scope of the *non-refoulement* prohibition is broader in human rights law than in the Convention Relating to the Status of Refugees, as the person in question is not required to prove fear of individual persecution related to a specific Convention Relating to the Status of Refugees ground. Some European Union Member States have included in their legislation on refugee-type protection provisions concerning those who may be unable to return home owing to a natural disaster. Law No. 10/2021 "On Asylum in the Republic of Albania" does not include environmental degradation nor climate change amongst the types of serious harm which can lead to granting such protection. Teitiota case is one of the most important decisions of the UN Human Rights Committee (HRC) regarding the "climate refugees" which will be analyzed above below.

2. **Climate change impact**

Climate change-related displacement — the forced movement of individuals and communities due to the adverse effects of climate change — is one of the most pressing and potentially existential challenges of the twenty-first century. The impacts of climate change are experienced globally and are "reshaping irrevocably migration patterns on all continents."[1]

On November 2020, the United Nations High Commissioner for Refugees (UNHCR) Special Advisor on Climate Action stated that: "*Climate change is the defining crisis of*

our time and its impacts are unevenly weighted against the world's most vulnerable people. Displaced and stateless people are among those in greatest need of protection" (Gaynor, 2020). Climate change is one of the most significant challenges of our time. Every day, climate change becomes a more urgent economic, social and existential threat to countries and their people, a factor that undoubtedly directly or indirectly affects the displacement of populations. Its catastrophic consequences are capable of posing a serious threat to the enjoyment of fundamental human rights.

Climate impacts- such as increased flooding and drought, stronger storms, and sea level rise-are already displacing millions of people. Approximately 265 million people have been displaced due to natural hazards since 2008 (Ponserre & Ginnetti, 2019). The World Bank estimates that climate change could force more than 143 million people in just three regions-South Asia, Sub-Saharan Africa, and Latin America to emigrate within their home countries by 2050 (Kanta Kumari Rigaud et al., 2018). While most climate migrants are forced to move within their home countries, many people are also forced to move abroad.[2]According to the intergovernmental Panel on Climate Change (IPCC), approximately 3.3-3.6 billion people live in context that are highly vulnerable to climate change. Human and ecosystem vulnerability are interdependent. The largest negative impacts of climate change are particularly evident among those people and communities that have least responsibility for the emergence of this phenomenon. People living in Africa, Asia, Central and South America, least developed countries, small islands and Arctic, indigenous people worldwide, small-scale food producers and low-income households are among those suffering the most severe effects.

Climate change and weather extremes are recognized as increasing driving internal displacement of people and communities, as well potentially contributing to migratory movements across borders. It is very important to understand the intricate relationship between climate change and migration is crucial for developing effective policies and interventions to support affected populations.

3. Definition

In legal terms, there is no such thing as a 'climate change refugee'. There is, however, evidence that people are moving in response to the effects of climate change—both in terms of its direct physical impacts (flight from a flood or cyclone), and its attendant socio-economic effects (on infrastructure, shelter, food and water supplies, livelihoods, and so on). On the one hand, this is nothing new. Movement away from disasters and their effects have always been a rational, adaptive response (McAdam, 2012). Indeed, the fact that there is still no internationally agreed definition of what it means to be an environmental 'migrant', 'refugee', or 'displaced person' makes it difficult to systematically progress deliberations about appropriate multilateral legal and institutional responses. Although international law provides no definition for a

[2] The Nansen Initiative, (2015) Agenda for the Protection of Cross- Border Displaced Persons in the context of Disasters and Climate Change p.1-56.

climate migrant, climate induced migration, environment refugee, all of this definition falls within the sub-category of environmental migration. Like environmental migration, climate -induced migration can describe movement that is temporary or permanent, voluntary or forced, internal or cross- border.

The legal definition of a 'refugee' and the rights and entitlements it entails are set out in the 1951 Refugee Convention relating to the Status of Refugees, read in conjunction with its 1967 Protocol. A 'refugee' is defined as someone who: *"owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."*[3] Proposals to expand the Refugee Convention to protect people who move across borders due to environmental and climate change factors have been discussed extensively at the international level. The Office of UNHCR does not support revision of the Refugee Convention, and has argued that 'refugee' is a legal term with a settled meaning centered on persecution. People whose movement is related to environmental factors would not normally qualify as refugees, although some could fall within UNHCR's mandate (e.g., where conflict is involved, where governments persecute those affected by withholding assistance, or where statelessness is a concern). According to UNHCR, the terms 'environmental refugee' and 'climate refugee' have no basis in international law and their use could confuse environmental factors with persecution, potentially undermining refugee protection standards (United Nations High Commissioner for Refugees, 2009). The UN High Commissioner in Refugee's criteria for determining refugee status justly interprets this definition as excluding "such person as victims of famine or natural disaster, unless they also have well-founded fear of persecution for one of the reasons stated" (UNHCR, 2011).

There are other problems with using the term" refugee". Strictly speaking, categorization as a refugee is reliant on crossing an internationally recognized border: someone displaced within their own country is an "internally displaced person" (IDP). Given that the majority of the people displaced by climate change will likely stay within their own borders may seriously understate the extent of the problem. Second, the concept of a "refugee" tends to imply a right of return once the persecution that triggered the original flight has ceased. This is, of course impossible in the case of sea level rise and so again the term distorts the nature of the problem. Third, there is the concern that expanding the definition of a refugee from political persecution to encompass environmental stressors would dilute the available international mechanisms and goodwill to cater for existing refugees (United Nations High Commissioner for Refugees, 2009).

On the other hand, the International Organization for Migration (IOM) defines environmental migration as "person or groups of persons who, predominantly for

[3] Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, Art 1 A (2), read in conjunction with Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.

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" (IOM, 2007). The definition for this group of people continues to be an issue that has not been resolved, even though climate migration is a global problem. The Refugee Convention was not drafted with environmental degradation in mind. There does not seem to be enough political momentum to overcome the existing hurdles to apply the convention in this context or to develop a new Convention on the protection of 'climate refugee.' Furthermore, the label itself is contested by several individuals to whom it would potentially apply. It is undeniable that individuals displaced by climate change must be protected. However, the Refugee Convention, at this point, is not the place to afford it (Petri, 2020).

4. Legislative framework on climate-related migration and displacement

A very important part of the analysis in this paper will be devoted to the International and European legal protection of climate migrants, as well as the Albania legislation. There are three main reasons why international human rights law is important to the present analysis. First, it sets out minimum standards of treatment that States must afford to individuals within their territory or jurisdiction, and provides a means of assessing which rights are compromised by climate change and which national authorities have primary responsibility for responding to those rights at risk. Second, if those rights are at risk, human rights law may provide a legal basis on which protection may be sought (and granted) in another State (known as 'complementary protection') (McAdam, 2007). Third, if relocation occurs, human rights law requires minimum standards of treatment to be observed in the host State, and is thus relevant to the legal status afforded to those displaced.

Human rights law has expanded States' protection obligations beyond the 'refugee' category, to include (at least) people at risk of arbitrary deprivation of life, torture, or cruel, inhuman or degrading treatment or punishment. This is known in international law as 'complementary protection', because it describes human rights-based protection that is complementary to that provided by the 1951 Refuge Convention.[4] EU,[5] Canada,[6] the United States (US),[7]

[4] Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, Art 1A(2), read in conjunction with Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.

[5] Council Directive (EC) 2004/83 on Minimum Standards for the Qualification and Status of ird Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted [2004] OJ L304/12 ('Qualification Directive') Arts 2(e), 15.

[6] Immigration and Refugee Protection Act, SC 2001, c 27, s 97.

[7] Immigration and Nationality Act of 1952, 8 CFR §§ 208.16, 208.17. This is CAT-based protection only: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 ('CAT').

New Zealand,[8] Hong Kong,[9] Mexico,[10] and Australia[11] all have systems of complementary protection in place to implement these international law obligations (McAdam, 2012). The key human rights to consider in the complementary protection context are: (a) the right to life (sometimes expressed in the removal context as the right not to be subjected to arbitrary deprivation of life); and (b) the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment. While these are not necessarily the only rights which entail a *non-refoulement* obligation, they are the two which are clearly recognized in international law as giving rise to such an obligation and which have been incorporated into a number of domestic complementary protection regimes. While environmentally displaced persons have limited or practically no protection under the Refugee Convention, there does not exist a complete lacuna within international law (Martin, 2017). Those displaced by climate change may find protection from the obligations deriving from human rights law under the principles of *non-refoulement*, which focuses on the existence of harm rather than the reasons for it (Borges, 2019). The right to life is protected in Article 3 of the Universal Declaration of Human Rights (UDHR),[12] Article 6 of the International Covenant on Civil and Political Rights (ICCPR), Article 6 of the Convention on the Rights of the Child (CRC),[13] and in all regional human rights treaties.[14] It has been described by the United Nations (UN) Human Rights Committee as the 'supreme right' which is 'basic to all human rights.'[15] Importantly, the right to life includes an obligation to take positive measures to protect it, which may be relevant in considering whether a country of origin is in fact taking steps to improve such things as healthcare and nutrition. A useful analogy for the climate change context may be provided by the UN Human Rights Committee's remarks on the threat to life posed by nuclear weapons. Nuclear weapons may not only cause death directly, but also indirectly by contaminating the environment with radiation. Similarly, the impacts of climate change experienced (for example) through salt-water intrusion into fresh water supplies could, on this reasoning, be interpreted as a threat to the right to life. In each case, however, the severity and extent of the harm would determine whether the right to life had been violated.

The scope of the *non-refoulement* prohibition is broader in human rights law than in the Convention Relating to the Status of Refugees, as the person in question is not required to prove fear of individual persecution related to a specific Convention Relating to the Status of Refugees ground. What matters is the existence of the risk

[8] Immigration Act 2009, No 51 (NZ) ss 130, 131.

[9] CAT-based protection only. Refugee status determination is conducted by UNHCR. See further, Loper, K. (2010) 'Human Rights, Non-Refoulement and the Protection of Refugees in Hong Kong' V.22 International Journal of Refugee Law p.404-439.

[10] Law on Refugees and Complementary Protection (2010): Decreto por el que se expide la Ley sobre Refugiados y Protección Complementaria y se reforman, adicionan y derogan diversas disposiciones de la Ley General de Población http://www.dof.gob.mx/nota_detalle.php ?codigo=5175823&fecha=27/01/2011 Mexico is the first country in Latin America to grant complementary protection: 'UNHCR Welcomes Breakthrough: Mexico Legislation on Protection' (UNHCR, 10 December 2010).

[11] In September 2011, legislation on complementary protection was passed by the Australian Parliament to amend the Migration Act 1958 (Cth): Migration Amendment (Complementary Protection) Act 2011 (Cth).

of ill treatment, not the reasons for it. It focuses on the needs of the individual and constitutes a preventative method for protecting human rights. Unlike the *non-refoulement* protection under Article 33 of the Convention Relating to the Status of Refugees, the protection under Article 3 of the European Convention on Human Rights, Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Article 7 of the International Convention on Civil and Political Rights are not subject to derogations. These characteristics – broad personal scope and non-derogability – make the *non-refoulement* principle a potential tool for those who do not qualify as refugees but still, as Environmental Displaced Persons, need protection. It reflects extension of the host state's "protection obligations beyond the 'refugee' category to include (at least) people at risk of arbitrary deprivation of life, torture, or cruel, inhuman or degrading treatment or punishment" (McAdam, 2012). Despite its potential, the provision of *non-refoulement* is hollow since it does not confer a right to residence or any specific legal status in a foreign country, thus allowing states considerable discretion in their treatment of foreigners in their territory (Borges, 2019). While protection gaps exist both for people fleeing sudden-onset disasters and those seeking to escape the effects of slower-onset impacts of climate change, there is a more obvious lacuna for the latter group. In part, this is because existing protection principles are more analogous to situations of sudden fight than pre-emptive movement.

5. European legal framework

At the EU level, an example of complementary protection is subsidiary protection granted under the Qualification Directive,[16] which however, does not include environmental degradation nor climate change amongst the types of serious harm which can lead to granting such protection. However, some European Union Member States have included in their legislation on refugee-type protection provisions concerning those who may be unable to return home owing to a natural disaster. For example, under the Swedish law, a person 'unable to return to the country of origin because of an environmental disaster' may also qualify for asylum.[17] However, this provision has never been applied. Furthermore, the preparatory papers make it clear that slow- onset processes are not covered.[18] Another example is the Finnish humanitarian protection framework, under which 'An alien residing in Finland is issued with a residence permit on the basis of humanitarian protection, if (...) he or she cannot return to his or her country of origin or country of former habitual residence as a result of an environmental catastrophe'.[19] The preparatory papers state that both natural and human-induced disasters fall within its scope. This provision is

[16] Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304, 30.9.2004, p.12-23.

17 Swedish Aliens Act, Chapter 4, Section 2a.

[18] European Commission Staff Working Document, (2013). Climate change, environmental degradation, and migration.

[19] Finnish Aliens Act, Chapter 6, Section 88 a (1).

less restrictive than the Swedish law, but has not yet been used either.[20]
The Temporary Protection Directive (2001/55/EC)[21] establishes minimum standards for providing temporary protection in the event of a mass in influx of displaced persons from third countries who are unable to return to their country of origin. This type of protection is only available where the EU recognizes a situation of armed conflict or endemic violence, with serious risks of systematic or generalized violations of human rights. Temporary protection takes different forms worldwide, but it is generally described as an exceptional measure and specific provisional protection response to situations of mass influx, aimed at providing immediate emergency protection from refoulement. Temporary protection status might be appropriate after severe rapid-onset disasters (such as floods), when masses flee from the area affected but when the possibility of them returning in the short or medium term remains open. Therefore, those persons have an immediate and temporary need for protection. An example of such status is the one granted under the EU Temporary Protection Directive, which has been designed in particular for persons who have fled areas of armed conflict or endemic violence and persons at serious risk of, or who have been victims of, systematic or generalized violations of their human rights. Nevertheless, the Directive leaves wide room for maneuver, in the form of open definitions of key words, such as 'mass influx'. At the national level, Finland is the only EU Member State offering an institutionalized mechanism that grants temporary protection in the event of an 'environmental catastrophe', without defining the concept. Even if this provision seems flexible, it has never been applied so far.[22] However, environmental migrants could potentially benefit from the principle of non-refoulement if, on return to their country of origin, they would face inhuman or degrading treatment, which is prohibited by Article 3 of the European Convention of Human Rights and Article 4 of the EU Charter of Fundamental Rights.[23]

6. Albania legislation

In the recent years, the Albanian legislation has adopted two new laws in the field of migration: Law No. 79/2021 "On Foreigners" and Law No. 10/2021 "On Asylum in the Republic of Albania". Regarding Law No.10/2021 "On Asylum in Republic of Albania", it has followed the path of conforming to EU Standards (Vito and Rakar, 2024). It is partially approximated with the Council Directive 2001/55/EC of 20 July 2001 on minimal standards on providing temporary protection in cases of massive

[20] European Commission Staff Working Document, (2013). "Climate change, environmental degradation, and migration" p.18
[21] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, Official Journal L 212, 07/08/2001 P.12 – 23.
[22] European Commission Staff Working Document, (2013). Climate change, environmental degradation, and migration.
[23] European Migration Network Inform (2023). Displacement and migration related to disasters, climate change and environmental degradation.

flows of displaced persons and on measures that promote a balance of efforts between Member States in receiving such persons and bearing the consequence. It is generally described as an exceptional measure and specific provisional protection response to situations of mass influx, aimed at providing immediate emergency protection from refoulement (Toma, 2024).

The Law of the Republic of Albania on Asylum has the same definition for a refugee as the 1951 Convention on the Refugees Status. In Article 5 - this law gives the right to asylum to anyone who has the characteristics of a refugee. One of the most important principles of the Geneva Refugee Convention of 1951 and the EU Acquis, which is the principle of non-refoulement is defined in Article 11 of the Asylum Law. The principle of non-refoulement in Article 11 of the Albanian Asylum Law is similar to Article 33 of the Geneva Convention.

7. Teitiota's case

One of the most important decisions of the UN Human Rights Committee (HRC) regarding "climate refugees" is the case of Teitiota v New Zealand, which has been widely hailed as heralding a major development in jurisprudence on "climate refugees."[24] It represents a significant, if imperfect step forward in patching together a regime of protection for the increasing number of people who are being displaced by the effects of climate change. Filippo Grandi, the current head of the UN High Commissioner for Refugees (UNHCR) described the HRC decision like the following: if you have an immediate threat to your life due to climate change, due to the climate emergency, and if you cross the border and go to another country, you should not be sent back because you would be at risk of your life, just like in war or in a situation of persecution (Baker, 2020).

For several years in the 2000s the claimant Ioane Teitiota and his wife struggled with living in poor-quality environment, frequently inundated by high tides and flooding. So, in 2007 they decided to leave their home in Tarawa, one of the islands in the low-lying Pacific Island state of Kiribati, for New Zealand. They managed to get jobs and work visas in New Zealand, and scrabbled together just enough money for their flights there. For several years, they toiled away at their jobs, had three children and settled into their new life. Problems arose when their visas ran out, and they inadvertently failed to renew them in time. Teitiota and his family had reached a dead end as far as their legal status in New Zealand was concerned, and their deportation back to Kiribati was the logical outcome (Behrman & Kent, 2020). However, they engaged an enterprising activist/lawyer, Michael Kidd, who decided to frame an alternative claim as 'climate refugees. This allows for a right to remain in New Zealand, either as a refugee under the terms of the 1951 Refugee Convention,[25] to which New Zealand is a state party, or alternatively on the basis of complementary protection under various other human rights treaties, namely the 1984 Convention Against Torture

[24] UN Human Rights Committee (HRC), (2020). Ioane Teitiota v New Zealand (advance unedited version now available: 23 September 2020) UN Doc CCPR/C/127/D/2728/2016.

[25] Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954).

(CAT),[26] and the 1966 International Covenant on Civil and Political Rights (ICCPR).[27] The evidence presented by Teitiota was based on his own testimony, plus that of an expert witness who has done extensive research on the effects of climate change in the region, and also the 2007 National Adaptation Program of Action (NAPA) presented by the government of Kiribati to the United Nations Framework Convention on Climate Change (UNFCCC).[28] Every court found the evidence presented to be entirely credible. All the evidence detailed coastal erosion, increased storm surges and flooding, contamination of relatively scarce sources of potable water that in turn has caused diseases especially amongst young children, loss of land on which to live and grow food that has in turn led to violent disputes between neighbors. Specifically, it was accepted that these deteriorating conditions of life on the islands has been caused, at least partly, by the effects of climate change, both sudden and slow-onset.[29] So clearly there was substantial evidence for a threat to life on Kiribati as a result of the effects of climate change.

Even though the claim repeatedly failed at each legal stage, the most important point in this litigation is to whether to refer to people like Teitiota as "refugees or climate migrants" or any kind of alternative. The confusion of the New Zealand courts is the discussion on the sociological versus legal conception of a refugee that appears from the initial Immigration and Protection Tribunal, and continues on through subsequent stages of the case. Part of the confusion stems from an attempt by Teitiota's lawyer to effectively ignore the distinction between the sociological and legal term.

However, it is unarguable, as the New Zealand courts pointed out, that in a legal context 'it is the legal conception which applies, not the sociological one.[30] The New Zealand courts sustain the Hathaway concept of persecution: a sustained or systemic violation of basic human rights demonstrative of a failure of state protection (Butterworths, 1991). There is no reason why this cannot include the situation of people like Teitiota; the effects of climate change are systemic in nature and sustained in their negative effects on individual and collective human rights. The claim for refugee status under the 1951 Refugee Convention was arguably a legal long shot. The judgments were unanimous that in the clear absence of any identifiable persecutor the claim failed. Even though the claim failed, the Supreme Court noted:

"*Both the Tribunal and the High Court decisions did not mean that environmental degradation resulting from climate change or other natural disasters could never create a pathway into the Refugee Convention or protected person jurisdiction. Our decision in this case should not be taken as ruling out that possibility in an appropriate case.*[31]"

[26] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987).

[27] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976).

[28] AF (Kiribati) (2013) NZIPT 800413, New Zealand: Immigration and Protection Tribunal, point 5-33 Available at https://www.refworld.org/jurisprudence/caselaw/nzipt/2013/en/122924

[29] AF (Kiribati) (2013) NZIPT 800413 (25 June 2013).

[30] AF (Kiribati), (2013) NZIPT 80041 (25 June 2013).

[31] Teitiota v Chief Executive of the Ministry of Business, Innovation, and Employment (2015) NZSC 107 point 13.

Teitiota lodged a claim with the Human Rights Council (hereinafter: HRC) alleged violations of the ICCPR, and not on refugee status. The claim alleged violation of the right to life under Article 6 of the ICCPR by New Zealand on the basis of the principle of *non-refoulement*, that New Zealand violated the positive obligation on states not to send people back to a place where their right to life would be threatened.

The HRC in its General comment number 36 clearly stated that environmental degradation can be brought within the scope of a violation of the right to life under Article 6 of the International Covenant on Civil and Political Rights,[32] highlighted this point in the Teitiota case. HRC have confirmed that 'Pacific Island states do not need to be under water before triggering human rights obligations to protect the right to life.'

The issue in this case is not about what happens when the islands are already submerged or otherwise uninhabitable, but what is done when life becomes so difficult to sustain that it causes suffering and a loss of dignity (Atapattu, 2022). The HRC had already stated some years back that the right to life is not restricted to mere existence, but encompasses a wider scope, 'to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity'.

The idea that a state's *non-refoulement* obligations are triggered where the right to life is threatened is not a legal revolution. It is a principle of customary international law and one that clearly falls within states parties' obligations under the ICCPR.[33] The case of the Teitiota is significant because it was the first before the HRC to allege a violation of the right to life based on the threat posed by climate change and sea level rise; and because it confirmed the availability complementary protection for people displaced across international borders for reasons associated with climate change (Cullen, 2020).

Last but not least the HRC has no authority to determine any legal question associated with statehood, and not purport to do so. But the aspects of the decision might pique political sensitivities. The issues it raises are legally and politically complex, and we should not be surprised if small island states are not universally applauding the HRC's findings, regardless of the protections that may ultimately be offered to their citizens as a result.

8. Conclusion

Displacement and migration caused by natural disasters, climate change and environmental degradation expose individuals and societies to high levels of risk. As early as 2009, Antonio Guterres warned that climate change would "become the biggest driver of population displacements, both inside and across national borders, within the not-too-distant future", and pointed to the need to address the

[32] HRC, 'General Comment No 36 (2019) on article 6 of the International Covenant on Civil and Political Rights, on the right to life' UN Doc CCPR/C/GC/36, point 62.

[33] hKb7yhsjYoiCfMKoIRv2FVaVzRkMjTnjRO%2Bfud3cPVrcM9YR0iW6Txaxgp3f9kUFpWoq%2FhW%2FTpKi2tPhZsbEJw%2FGeZRASjdFuuJQRnbJEaUhby31WiQPl2mLFDe6ZSwMMvmQGVHA%3D%3D.

lack of protection for those forced to leave.[34] The 1951 Refugee Convention does not qualify environmentally displaced people as refugees, the international and EU legal framework does not include climate change as a ground for international protection, and that very few European Members States have a specific legal status or protection mechanism under the national law for those displaced due to the effects of disasters or offer another form of protection. The absence of a common legal definition of environment-related migrant which, at the time being, mirrors the lack of a common understanding of such a matter within the International Community as a whole.

Following the legal lacuna left by the international refugee regime, the principle of *non-refoulement* in light of the expanding protection of the right to life under the human rights regime emerges as a complementary protectionary avenue. The findings show that states have *non-refoulement* obligations when there is a real, personal, and reasonably foreseeable risk of a threat to the right to life. As climate change impacts *per se* can violate the right to life, states are prohibited from returning an individual under such circumstances. While the principle of *non- refoulement* does not confer legal status or grant asylum, it could be a medium-term solution as climate change intensifies and triggers more cross-border displacement. The Teitiota decision illustrates a legal path for protection for individuals displaced by climate change by the principle of non-refoulement. A clear victory is the admission of the case before the Committee, which cements that climate change has adverse effects on individuals lives and livelihoods. This confirmation is essential. Based on international human rights law, this non-binding decision could become a reference for future judgments by the European Court of Human Rights (ECHR) or the European Court of Justice (ECJ) which have taken a position on several environmental cases but have yet to do so for return decisions linked to climate change.

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