DOI https://doi.org/10.17234/SocEkol.35.2.4
UDK 341.231.14-054.7:502

Pregledni rad
Primljeno: 05. 03. 2026.
Prihvaćeno: 12. 05. 2026.

REFUGEES AND CLIMATE-CHANGE-RELATED MIGRANTS: A CONCEPTUAL DISTINCTION

Anatolii Getman, Volodymyr Steshenko, Volodymyr Shekhovtsov, Oleh Tarasov and Svitlana Kozar

Anatolii Getman
Yaroslav Mudryi National Law University
61000, 77 Hryhorii Skovoroda Str., Kharkiv, Ukraine
https://orcid.org/0000-0002-1987-2760

Volodymyr Shekhovtsov
Department of Environmental Law
Faculty of Advocacy
Yaroslav Mudryi National Law University
61000, 77 Hryhorii Skovoroda Str., Kharkiv, Ukraine
https://orcid.org/0000-0002-9101-7160

Volodymyr Steshenko
Department of International Law
Yaroslav Mudryi National Law University
61000, 77 Hryhorii Skovoroda Str., Kharkiv, Ukraine
https://orcid.org/0000-0002-1010-0123

Oleh Tarasov
Department of International Law
Yaroslav Mudryi National Law University
61000, 77 Hryhorii Skovoroda Str., Kharkiv, Ukraine
https://orcid.org/0000-0002-9070-5965

Svitlana Kozar
Department of International Law
Yaroslav Mudryi National Law University
61000, 77 Hryhorii Skovoroda Str., Kharkiv, Ukraine
https://orcid.org/0009-0007-7423-5880

Abstract

The objective of this paper is to draw a legal distinction between the concept of refugees and climate-induced migrants through basic legal analysis, thereafter developing a legislative model for the protection of people displaced due to climate change outside the framework of refugee status based on international human rights law and regulatory approaches by the European Union. This research was carried out in 2024–2025 as doctrinal and analytical legal research based on purposively selected non-random samples from international and EU law plus quasi-judicial decisions. It reconstructs within positive law parame-

ters the refugee institution under the 1951 Convention together with its 1967 Protocol and systematically identifies the legal limits of its applicability to climate-induced displacement without recourse to expansive interpretation. Findings demonstrate that core structural elements of refugee status are primarily related to persecution by the state of citizenship or the state of residence. It has been shown that effective protection for people displaced by climate change lies outside refugee law in primary international human rights law through an autonomous application of non-refoulement when there is a real risk of serious harm. In this regard, based on the principle of the best interests of the child, special attention should be paid to protecting the rights of child climate migrants and child refugees. Analysis of the EU normative framework presents current European approaches as partially aligned with international standards but simultaneously exposes structural limitations of the existing asylum model in addressing climate-induced displacement. The results are also relevant for national legal systems undergoing post-conflict and accession-related transformation. The findings contribute to the development of international migration law doctrine, to the improvement of EU law enforcement practices, and to national approaches to future legal adaptation.

Keywords: *best interests of the child, children's rights, human rights, non-refoulement, refugees*

1. INTRODUCTION

Contemporary climate change has triggered increasing transborder movement of people whose causes do not fit within the classical model of forced migration under international refugee law. In the context of this research, climate migrants are defined as individuals who are forced to move away from their place of usual residence because of climatic change, either sudden or progressive, that negatively impacts their living situation. This migration can be within the country's borders or across them, and is usually a product of both environmental and socio-economic conditions.

This creates significant legal uncertainty about both the scope and mechanisms for their protection. Existing refugee law does not cover persecution or individual risk in cases of climate-induced displacement. At the same time, international human rights law lacks a structured and coherent protection regime for such persons. Current academic conceptualisations often frame climate change–induced displacement as a mass influx of people rather than a holistic multi-dimensional phenomenon occurring at the intersection of environmental, socio-economic, and legal factors, none of which operate independently.

This approach clearly demonstrates that climate migration is not an automatic consequence or direct result from environmental degradation but happens through interaction between climatic stress, social vulnerability levels, the institutional capacity of the state and pathways to access adaptation mechanisms (Piguet, 2022). However, such an approach explicitly points out towards absence for any clearly formulated legal categories pertaining to such movements, leaving essentially a situation characterised by normative uncertainty. Recent empirical studies further support this finding. Thus, based on the analysis of climate indices with migration flow data, other researchers report a statistically significant relationship between extreme climatic events and both internal and cross-border migration (An et al., 2025).

Importantly, the authors stress that such movements only partly correspond to classical models of forced migration. Similar emphasis appears in review articles addressing risks for displaced persons in the context of climate change where climatic factors are examined

together with conflict, poverty and weak state institutions rather than as an autonomous driver of migration (Fransen et al., 2025). As other authors convincingly argue, sudden-onset disasters and gradual environmental degradation do not fall within the Convention's concept of persecution in the absence of a human agent or discriminatory intent (Storey, 2021). This is also clearly reflective of contemporary doctrine since most scholars warn against an overly broad interpretation of the concept 'refugee' which would destroy the internal coherence and integrity of refugee law by allowing for such an interpretation. Meanwhile, more attention is being paid to international human rights law among scholars. For instance, Cantor et al. (2024) highlight that in cases of climate-induced displacement, it is mainly through human rights protection mechanisms and not refugee status that minimum standards for safety can be ensured: "protection regimes founded on prohibitions against removal to situations involving a real risk of serious harm remain applicable." A similar argument has been advanced by Thornton (2022), who considers the practice of UN Treaty Bodies to show how an independent approach concerning climate-related displacement under human rights law appears to be emerging gradually.

As Bhardwaj (2021) notes, this was a turning point decision: on the one hand, it confirmed the possibility of applying the prohibition on return outside refugee status; while on the other hand, it set an exceptionally high standard for real and imminent risk. The argument along this line is developed further by Foster and McAdam (2022), who focus more specifically on harm's 'imminence' criteria, demonstrating its decisive role in separating merely hypothetical threats from those that are truly real. Bell-James and Collins (2022) take a more conceptual approach to the links between climate change and human rights, arguing for the activation of positive obligations via climate-related risks in preventing human rights violations through state responsibility: "Such obligations are not automatically assumed as an obligation to grant refugee status". Again, conceptual clarity is clearly required concerning different regimes of international protection.

A separate body of research addresses the approaches of the European Union. Koçi (2025), analysing the evolution of EU policy on climate-induced migration, points to the fragmented nature of the EU acquis and, in particular, to the absence of a specific legal status for persons displaced for climate-related reasons. At the same time, the author notes that law enforcement practice and instruments of EU secondary law may provide a foundation for the development of non-status-based protection mechanisms. Finally, comprehensive works situate climate-induced migration within the broader field of forced migration studies (Fiddian-Qasmiyeh et al., 2014).

However, a significant conceptual and normative vacuum still exists in this field. There is still no clear legal distinction between refugees and climate-induced migrants to prevent fractured and methodologically dubious attempts at broad interpretations of the notion 'refugee'. A very detailed development concerning autonomy that non-refoulement enjoys outside refugee status is lacking, especially with respect to criteria for establishing a real risk of serious harm in a climatic context. What seems to be missing from most works is an analysis that takes fully into account the best-interest principle

in situations involving children and unaccompanied children, as well as an assessment of the adequacy of the EU acquis, including New Pact on Migration and Asylum, in relation to candidate states, notably Ukraine.

The aim of this study is to provide a legal differentiation between the institution of refugees and climate-induced migration through a fundamental legal analysis and to formulate a legal model for the protection of persons displaced as a result of climate change outside refugee status, grounded in international human rights law and the European Union acquis. This article adopts a doctrinal and analytical approach and may be characterised as a review-based legal analysis of existing international and European legal frameworks.

To achieve this aim, the article sets the following research objectives: to conduct a legal analysis of climate-induced displacement in the context of contemporary international migration processes; to reconstruct the legal framework of refugee status under the 1951 Refugee Convention and 1967 Protocol relating to the Status of Refugees (United Nations General Assembly, 1967) and to determine the limits of its applicability to climate-related displacement; to characterise the protection of persons displaced by climate change within international human rights law, with particular emphasis on the autonomous application of the principle of non-refoulement, including the situation of children and unaccompanied children; to assess the normative adequacy of the EU acquis, in particular the Pact on Migration and Asylum (European Commission, 2024), and to outline directions for legal adaptation at the level of the European Union and Ukraine.

2. MATERIALS AND METHODS

This is a doctrinal and analytical legal study carried out in the period 2024–2025 examining refugee law and climate-induced migration. The research has been conducted purely based on publicly available international normative and quasi-judicial materials at the international and regional levels. No sociological surveys or experiments with human participants were used in this research.

The empirical basis of the study consisted of a purposive non-random sample of legal sources formed according to predefined criteria. The sample included international and regional normative acts and quasi-judicial decisions, in particular universal human rights treaties, including the International Covenant on Civil and Political Rights (United Nations General Assembly, 1966) and the Convention against Torture (United Nations General Assembly, 1984), The 1951 Refugee Convention and 1967 Protocol relating to the Status of Refugees (United Nations General Assembly, 1967), as well as European Union legal instruments in the field of migration and asylum, including the Pact on Migration and Asylum (European Commission, 2024).

The quasi-judicial component of the sample encompassed decisions and consolidated legal positions of UN treaty bodies concerning the prohibition of return and standards of protection against serious harm. These included General Comments No. 31 and No. 36 of the Human Rights Committee, as well as the cases *Ioane Teitiota v. New Zealand* and

Billy et al. v. Australia, which are of fundamental importance for assessing climate-related risks in the context of the principle of non-refoulement (Human Rights Committee, 2004, 2018, 2020, 2022). In addition, General Comment No. 26 of the Committee on the Rights of the Child (2023) was included as relevant to the analysis of the situation of unaccompanied children under conditions of climate-related threats.

The criteria for selecting the sample were their normative or quasi-judicial nature, direct pertinence to issues of forced return, protection from serious harm or legal status of aliens, and their suitability for legal analysis without political or programmatic considerations. Political declarations, programmatic reports, non-normative resolutions, national judicial practice, and strategic planning documents were excluded as outside the scope of analysis.

At the first stage, the legal construction of refugee status was reconstructed through an examination of its structural elements as set out in the 1951 Convention and clarified in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (UN High Commissioner for Refugees, 2019). This construction was then applied to situations of climate-induced displacement in order to test the limits of its applicability without resorting to an expansive interpretation of the concept of 'refugee', taking into account the specific UNHCR guidance on displacement related to disasters and climate change (UN High Commissioner for Refugees, 2016).

The subsequent stage was devoted to the analysis of international human rights law as an autonomous normative basis for the protection of climate-induced migrants. Within this stage, the principle of non-refoulement was examined as an independent legal mechanism applicable where there is a real risk of serious harm, irrespective of the existence of refugee status, drawing on treaty norms and the quasi-judicial practice of UN bodies (United Nations General Assembly, 1966, 1984; Human Rights Committee, 2004, 2020). Particular attention was paid to the group of unaccompanied children, for whom the criterion of the best interests of the child was applied as a legal standard, as articulated in the practice of the Committee on the Rights of the Child (2023).

The analysis of the EU acquis was carried out through a normative comparison between the provisions of the Pact on Migration and Asylum (European Commission, 2024) and the international protection standards developed within human rights law. The comparison was conducted across three parameters: grounds for access to protection, the permissibility of return, and procedural guarantees, which made it possible to assess the normative adequacy of the current European Union model and to identify potential directions for legal adaptation (European Parliament and Council, 2024a, 2024b, 2024c). The study is limited to international and supranational legal frameworks, primarily universal human rights treaties and EU law.

3, RESULTS

The reconstruction of the legal construction of refugee status, carried out on the basis of the 1951 Refugee Convention and 1967 Protocol relating to the Status of Refugees (United Nations General Assembly, 1967), reveals a relatively clear, though not always

explicitly articulated, system of interrelated elements. This is neither a set of declarative features nor a list of alternative conditions. Rather, it is a legal model that operates only when all of its components are present simultaneously. The absence of even one element renders the qualification of a person as a refugee in the conventional sense impossible—a situation that, in practice, occurs far more frequently than might initially appear. Persecution is the core concept around which other elements are constructed. Even though the 1951 Convention fails to provide any formal definition of this notion, persecution has been construed by doctrinal interpretation and also in the leading documents of UNHCR as either a grave violation of fundamental rights or a set of measures reaching an equivalent gravity (UN High Commissioner for Refugees, 2019). An important nuance sometimes forgotten is that not every harm can be equated with persecution. There is some qualitative difference between them, which cannot generalise hardships in life-economic crises or even large-scale structural upheavals. This is exactly where this analysis finds its first major conceptual obstacle concerning climate-induced displacement. Environmental degradation does not constitute persecution unless it transforms into targeted acts or omissions directed against a specific individual or a clearly identifiable group.

Also basic is the link between persecution and one of the Convention grounds—race, religion, nationality, membership of a particular social group or political opinion. In fact, this connection operates as a legal filter that defines the scope of refugee law in distinction from broader harm-based protection. An examination of both textual and practical (interpretative) application of the Convention reveals that environmental factors per se are not listed among them. Their inclusion among convention grounds is possible only by way of broad interpretation which, as has been constantly stressed in legal doctrine, runs counter to the principle of legality (UN High Commissioner for Refugees, 2019).

The fourth element is the individualisation of risk. The status of a refugee is not based on the general situation in the country of origin but on a threat that is specifically directed personally at him or her. This approach has been constantly emphasised both by UNHCR guidance and jurisprudence. Large-scale environmental disasters affecting most parts of the population do not typically satisfy this requirement for individualisation even if their effects are severe, systemic, and long-term. It is exactly this feature which makes mechanical transposition of climate-induced displacement into classical refugee status framework legally problematic.

Finally, a fifth element of particular relevance is the standard of proof. Within refugee law, this standard is formulated as a 'well-founded fear' and in essence combines the applicant's subjective apprehension with the objective verifiability of risk. It is at this level that climate-induced displacement encounters a particularly acute tension within the legal model. The forecasting of environmental threats, even when based on recognised scientific models, rarely permits the degree of individualised probability required to substantiate refugee status. The risk is often diffuse, temporally remote, and collective in nature; features that, as practice demonstrates, sit uneasily with the logic of personalised

evidentiary assessment. In addition to persecution, Convention grounds, and the agent of persecution, the model also includes the requirement of individualisation of risk, followed by the applicable standard of proof. In light of this problem, the key elements of the legal construction of refugee status and their relationship to climate-induced displacement are summarised in Table 1.

Table 1. *Structural Elements of Refugee Status and their Applicability to Climate-Induced Displacement*

Structural element	**Content in refugee law**	**Applicability to climate-induced displacement**
Persecution	Serious violation of rights reaching a high level of intensity	Generally absent; environmental harm does not constitute an act of persecution
Convention ground	Race, religion, nationality, membership of a particular social group, political opinion	Does not encompass environmental factors
Agent of persecution	State or non-state actor where state protection is unavailable	No individualised agent of persecution
Individualisation of risk	Threat directed personally at the individual	Predominantly collective and diffuse risk
Standard of proof	Well-founded fear of persecution	Difficult to reach the required level of individualisation

Source: *Compiled by the authors based on United Nations General Assembly (1967), UN High Commissioner for Refugees (2016, 2019), Human Rights Committee (2020).*

The results indicate that the legal construction of refugee status is internally coherent and normatively self-contained. Its application to climate-induced displacement is possible only through a substantial expansion or transformation of its core elements, which would exceed the limits of permissible interpretation of the 1951 Convention. Even where its anthropogenic origins are acknowledged, climate change does not logically conform; it involves multi-layered long-term structural processes which cannot be reduced into an act of persecution within the meaning given by the convention (UN High Commissioner for Refugees, 2019).

The second limit derives from the exhaustive nature of the Convention grounds. The 1951 Convention ties protection to five clearly defined characteristics that are identificatory and socio-legal in nature. Climate-related factors cannot be incorporated into this list without a radical transformation of the institution itself. The analysis of the study confirms that expansive interpretations of the category of 'membership of a particular social group' aimed at encompassing climate-induced migrants are methodologically fragile, as they replace a legal criterion with a factual commonality of circumstances and undermine the distinction between refugee law and the general regime of human rights protection.

The third structural limit concerns the requirement of individualisation of risk. The Convention model of protection is based on the need to demonstrate a personalised well-founded fear of persecution that distinguishes the applicant from others in the country of origin. Climate-related threats are typically collective or territorial in nature and affect broad segments of the population simultaneously. This makes the application of the classical standard of individualisation impossible without introducing artificial constructs that fall outside the logic of the Convention (UN High Commissioner for Refugees, 2019).

A separate limit concerns the standard of proof. In refugee law, it is sufficient to establish a real risk of persecution on the basis of past events or foreseeable actions of the persecuting agent. Climate-related risks, by contrast, are predictive in nature and depend on multiple variables, including the pace of environmental degradation, the adaptive capacity of the state, and the availability of international support. Quasi-judicial practice confirms that, even where serious environmental threats are present, such circumstances do not meet the standard of persecution within the meaning of the 1951 Convention (Human Rights Committee, 2020, 2022). In order to synthesise the identified limits and enhance analytical clarity, the results are systematised in Table 2, which sets out the key criteria of refugee status and the reasons for their inapplicability to climate-induced displacement.

Table 2. *Limits of the Applicability of Refugee Status to Climate-Induced Displacement*

Refugee status criterion	**Content under the 1951 Convention**	**Climate-induced displacement**	**Legal conclusion**
Persecution	Targeted serious harm by the state or an actor under its control	Harm resulting from natural or structural climatic processes	Absence of the Convention element of persecution
Convention grounds	Race, religion, nationality, membership of a particular social group, political opinion	Environmental and climatic factors	The exhaustive list does not cover climate-related reasons
Individualisation of risk	Personalised well-founded fear	Collective or territorial risk	Impossibility of classical individualisation
Standard of proof	Real risk of persecution linked to actions of an agent	Predictive, multi-factor risks	Non-compliance with the refugee law standard
Legal consequences	Acquisition of refugee status with a full set of rights	Need for protection without refugee status	Necessity of an alternative protection model

Source: *Compiled by the authors based on United Nations General Assembly (1967), UN High Commissioner for Refugees (2016, 2019), Human Rights Committee (2020, 2022).*

These findings, therefore, demonstrate that the possibility of extending refugee status to climate-induced displacement is restricted by the very construction of the 1951 Convention. This, in turn, supports a shift towards an analysis of autonomous protection mechanisms within international human rights law, and specifically non-refoulement, which does not depend on refugee status and can be invoked where there is a real risk of serious harm precipitated by climate-related factors.

The results of the study demonstrate that international human rights law establishes an autonomous and functionally complete model for the protection of persons displaced as a result of climate change, independent of the presence or absence of refugee status. Unlike refugee law, this model does not rest on the legal construction of persecution but is instead based on an assessment of the real risk of serious harm to fundamental human rights in the event of return. The central element of this autonomous model is the principle of non-refoulement in its human rights dimension. An analysis of the International Covenant on Civil and Political Rights and the Convention against Torture confirms that the prohibition of return is not confined to situations of individualised persecution but extends to all cases in which return would create a real risk of deprivation of life or of exposure to inhuman or degrading treatment (United Nations General Assembly, 1966, 1984). General Comment No. 31 of the Human Rights Committee (2004) affirms states' obligations to ensure effective protection of rights, including by refraining from actions that lead to foreseeable violations beyond their territory where such consequences are causally linked to the decision to return an individual.

The quasi-judicial practice of UN bodies further specifies the application of this model to climate-related risks. In *Ioane Teitiota v. New Zealand*, the Human Rights Committee (2020) acknowledged that environmental degradation and related climatic processes may, under certain conditions, reach the threshold of a threat to the right to life, even if that threshold had not yet been crossed at the time of adjudication. The subsequent decision in *Billy et al. v. Australia* expanded this approach by establishing that a state's prolonged inability to secure minimum conditions of existence in the context of climate change may constitute a violation of human rights, irrespective of the individual's possession of any status within the asylum framework (Human Rights Committee, 2022).

The results allow the conclusion that the autonomous protection model is based not on the classification of the individual, but on an assessment of the consequences of return. The decisive factor is the establishment of a real, foreseeable, and individually relevant risk of serious harm. In this context, individualisation does not require proof of the uniqueness of the threat, as in refugee law, but rather an assessment of whether the return of a specific person would entail unacceptable consequences for their fundamental rights, taking into account the broader climatic context.

A particular place within the autonomous model is occupied by the protection of children and unaccompanied children. General Comment No. 26 of the Committee on the Rights of the Child (2023) affirms that environmental degradation and climate change directly affect the enjoyment of children's rights, and that the principle of the best interests of the child must be applied as a legally binding criterion in decisions on return.

The analysis shows that, for children and unaccompanied children, climate-related risks have an enhanced legal effect, as they intersect with age-based vulnerability, dependence on the social environment, and limited adaptive capacity.

Although the Pact on Migration and Asylum does not recognise climate-induced migrants as a distinct legal category, an analysis of the 2024 directives and regulations indicates a gradual strengthening of the role of serious-harm risk assessment and procedural guarantees in return procedures. For instance, legislation such as the Asylum Procedures Directive and the Qualification Directive focuses on evaluating serious harm, as well as on procedural protection, which may perhaps include climate-change-induced risks through the current legal framework (European Commission, 2024; European Parliament and Council, 2024a, 2024b, 2024c). This development creates normative preconditions for the practical application of the human rights–based protection model by Member States. To systematise the findings and to clearly distinguish the autonomous model from refugee status, the key elements of protection for climate-induced migrants are summarised in Table 3.

Table 3. *Autonomous Model for the Protection of Climate-Induced Migrants in International Human Rights Law*

Criterion	Refugee law (1951 Convention)	International human rights law
Legal basis	Persecution on Convention grounds	Real risk of serious harm
Core mechanism	Granting of refugee status	Prohibition of return (non-refoulement)
Individualisation	Well-founded fear of persecution	Assessment of the consequences of return for human rights
Nature of risk	Acts or omissions of a persecuting agent	Structural threats, including climate-related risks
Legal status of the person	Decisive	Not legally determinative
Protection of children	Derivative of status	Best interests of the child as an autonomous standard

Source: *Compiled by the authors based on United Nations General Assembly (1966, 1984), Human Rights Committee (2004, 2018, 2020, 2022), Committee on the Rights of the Child (2023).*

The results confirm that the autonomous model, within international human rights law, is normatively grounded, functionally flexible in protecting climate-induced migrants, and oriented towards effective protection, without substituting for or expanding the concept of 'refugee'. This responds to challenges of climate-induced displacement by applying universal human rights standards through legal certainty in refugee law: particularly with non-refoulement as a key principle, alongside the best interests of the child.

4. DISCUSSION

To put the results plainly, they call for a reconsideration of assumed theories within contemporary international migration law. The findings confirm a structural incompatibility between climate-induced displacement and the legal framework of the 1951 Refugee Convention. This may not be an entirely new conclusion but it is nevertheless important. It comports with doctrinal approaches found in foundational works on refugee law wherein strictly formalised legal testing is understood to lead either to a strictly, formally tested outcome or to a general humanitarian protection outcome (Byrne 2008). In this respect, the findings are also very much in line with the practice of international judicial or quasi-judicial bodies. As synthesised by Bruno et al. (2019), even in contexts of major humanitarian crises, international tribunals have not broadened the definition of 'refugee' beyond Convention criteria.

Note that these findings do not in any way contradict empirical literature on the relationship between climate change and migration. If anything, they qualify its legal implications. Rudolph et al. (2022) show convincingly, using data from Bangladesh, that environmental change does indeed influence intentions and decisions to migrate, but their findings do not warrant an automatic transposition of such movements into the realm of refugee law. McMichael (2023) takes a similar position; she examines the impacts of climate change on population health and mobility without treating refugee status as a relevant legal response. The present results are fully compatible with such approaches since they clearly separate the socio-economic from the legal dimension of the problem—something which is all too often blurred in practice.

An analysis of *Ioane Teitiota v. New Zealand* shows that the Committee carefully avoided making any precedent-setting recognition of climate-related factors as grounds for the granting of refugee status, while at the same time recognizing a possible relevance of prohibition on return in situations involving a real risk to life (Laki, 2022). This was not an isolated approach. Later decisions follow this logic and effectively confirm what was concluded in this study regarding an autonomous character that the principle of non-refoulement enjoys within international human rights law, separate from a status-based model under refugee law.

The results also correlate well with contemporary research in European migration law. Korolova et al. (2022) note that EU policies are increasingly oriented not towards rigid status-based categories, but towards risk management and procedural guarantees. A similar logic is evident in analytical materials of the European Parliament concerning the reform of the Common European Asylum System (Matera & Taylor, 2014). In this sense, the conclusions reached in this study regarding the inadequacy of refugee status for climate-induced displacement appear fully consistent with the evolution of the EU acquis. At the same time, they allow for a critical reassessment of overly optimistic evaluations of the potential of so-called 'managed climate migration' that occasionally appear in policy-oriented literature. For instance, Lindegaard et al. (2025), drawing on examples from Ghana, emphasise institutional mechanisms of mobility management

while largely overlooking the rigid constraints of status-based law. The present study demonstrates that, without a clear legal distinction between refugee law and human rights law, such approaches remain vulnerable—not politically, but precisely from a legal perspective.

The analyses of the research make it possible to move beyond a purely status-focused debate and to formulate a broader conclusion regarding the existence of a systemic legal vacuum in the protection of climate-induced migrants. A similar question, which also needs to be taken into account, relates to the legal status of those individuals who have come to the destination state by irregular means. In spite of the focus on human rights, the use of the principle of non-refoulement does not necessarily mean that their legal status will be legalised. There may be conflicting interests of migration control and the protection of individuals. For instance, those people who have entered the state illegally but face significant risks of persecution cannot be regarded as being in a proper position from a legal perspective.

This approach merely conceals the problem without addressing it substantively. In this respect, the conclusions align with the position advanced by Sabirin et al. (2024), who explicitly refer to "legal vacuums" in international law concerning persons displaced by climate change. At the same time, the present study refines this argument by demonstrating that the issue is not limited to the absence of a specific legal status, but rather reflects a deeper structural incompatibility between climate-related risks and the internal logic of the 1951 Convention.

Therefore, it becomes particularly instructive to compare the results with approaches developing within the framework of global climate governance. Vanhala and Calliari (2022) find in their analysis of the work performed by the UNFCCC Task Force on Displacement that there is a gradual shift in the consideration of climate-related mobility from an issue pertaining to legal status to one about governance of mobility. From a legal perspective, this paper finds merit in such reconsideration. The logic based on status-oriented refugee law cannot adequately capture alternative factors, prognostic, and often temporally delayed nature dimensions associated with climate threats; hence it articulates another mode for engaging legislative alternatives.

These findings are also consistent with the analytical assessments made on current climate-migration policies. Clements (2024) highlights the problems in quantifying mobility that is induced by climate and the dangers in normative responses which are not based on clearly defined legal categories. This paper confirms a similarly cautious stand, showing that not only is it methodologically wrong to use terminology of refugee law in the context of climate, but such usage creates legal expectations which will hardly ever be fulfilled in practice.

The same perspective applies to the works prescribing future agendas in integration and migration policy. Waters (2025) provides an elaborate agenda on long-term preparations for climate migration, particularly in aspects of integration and adaptation. While this paper does not contest the utility of such an approach, it clearly defines the legal limitations thereto. Integration strategies will only work if they discard inappropriate

status-based analogies with refugees and instead adopt a protection model based on human rights rather than the technical categories of refugee law.

A separate discussion is warranted regarding the role of the EU acquis in shaping the future legal architecture of protection. An analysis of the EU New Pact on Migration and Asylum shows that the European legislator deliberately refrains from incorporating climate-related factors into the definition of a refugee. Instead, emphasis is placed on strengthening procedural guarantees and mechanisms for assessing the risk associated with return. This approach is consistent with the conclusions of Matera and Taylor (2014), who earlier emphasised the primacy of human rights in crisis situations within the Common European Asylum System.

Equally illustrative in this context are critical assessments of the legal status of so-called 'climate refugees' in international doctrine. Wattihuleuw et al. (2024) question the very possibility of effectively regulating such a status within the framework of existing international law, emphasizing the structural mismatch between climate-related displacement and the legal construction of refugee status. The results of the present study support this sceptical position and demonstrate that attempts to extend refugee status to climate-induced migrants are not only normatively problematic, but also risk generating false legal expectations that cannot be fulfilled within the Convention framework. At the same time, the findings offer a constructive alternative that is of particular relevance for states undergoing legal transformation, including Ukraine (Haraschuk et al., 2020). This alternative lies in an autonomous protection model grounded in the principle of non-refoulement and other norms of international human rights law, which allows protection against return without reliance on formal status classification and without undermining the internal coherence of refugee law.

Additional support for this conclusion is provided by comparison with critical approaches to the regulation of structural crises. Mah (2021) convincingly demonstrates that attempts to regulate systemic and long-term phenomena through legal instruments designed for individualised violations are normatively flawed. This insight directly correlates with the findings of the present study and further confirms the unsuitability of the status-based logic of refugee law for addressing climate-induced displacement.

This logic helps to explain the contemporary architecture of the EU acquis, including the deliberate exclusion of climate-related factors from the refugee definition alongside the strengthening of rights-based guarantees outside the framework of refugee law. For Ukraine, particularly in the context of post-war reconstruction and prospective European Union membership, this evolution implies that legal adaptation should focus not on the creation of new migration statuses, but on an interpretative and procedural recalibration of existing mechanisms of return and protection, ensuring that assessments of 'serious harm' and returnability are aligned with international human rights standards and evolving EU practice (Lytvyn et al., 2022).

Of special importance is the protection of children and unaccompanied children. The findings in this article support contemporary approaches to interpreting and applying the principle of the best interests of the child, a context within which autonomous

legal meaning has gradually developed and continues to develop, changing traditional perceptions regarding the fully derivative nature from migration law's rules on children's protection and opening new avenues for further research, particularly with regard to standards for assessing long-term environmental risks to children. In sum, the results confirm necessity at the conceptual level, from status-oriented models towards rights-based protection mechanisms adjusted to the realities of climate change. That arguably forms main contribution of the present study to the scholarly debate.

5. CONCLUSIONS

The study has achieved its stated objective while clearly delineating the limits of applying classical instruments of international migration law in the context of climate change. Through the analysis, a legal distinction was drawn between the institution of refugees and climate-induced migration, and the appropriateness of a non-status-based model for the protection of persons displaced as a result of climatic factors within international human rights law was substantiated. It was found that refugee status as legally constructed by the 1951 Convention is based on clearly defined structural elements which do not correspond to the characteristics of climate-induced displacement. Even severe and long-term climatic factors do not meet the requirements of persecution, Convention grounds or a personalised standard of proof. This means that such displacement could fall within the scope of refugee protection under the 1951 Convention only through an expansive interpretation, which is methodologically unjustified and contrary to the principle of legal certainty.

A more coherent and legally sound approach should be based on international human rights law, taken as an independent structural base for protection which is capable of responding to both structural and predictive threats associated with climate change. A key outcome of the study is the substantiation of the principle of non-refoulement as an independent legal mechanism applicable wherever there is a real risk of serious harm, irrespective of the granting of refugee status. Particular attention was devoted to the situation of children and unaccompanied children, for whom the principle of the best interests of the child is determinative. In the climate context, this principle acquires autonomous legal significance and requires that long-term environmental risks be taken into account when decisions on return are made.

The analysis of the EU acquis revealed a gradual shift away from status-oriented solutions towards a procedure-oriented model of protection, creating normative preconditions for further legal adaptation both at the level of the European Union and for candidate states, including Ukraine. In the Ukrainian context, these findings indicate that legal adaptation does not necessitate the creation of new migration statuses, but rather requires an interpretative and procedural adjustment in the application of existing return and protection mechanisms, particularly with regard to the assessment of serious harm and climate-related risks in line with the principle of non-refoulement. Further research should focus on the legal position of individuals entering states irregularly and

the practical implementation of human rights-based protection mechanisms in such contexts.

RIGHTS

Social Ecology journal supports open access and all its content is freely available with no charge to the user. According to the CC BY licence that Social Ecology applies, all articles published by the journal are immediately and permanently free for users to read, download, copy, and redistribute without the explicit permission from the publisher or author. Link to licence deed: https://creativecommons.org/licenses/by/4.0/

REFERENCES

An, N., Demiraldy, Z., Ucal, M., and Kurnaz, M. L. (2025). The Nexus Between Migration and Environmental Degradation Based on Fundamental Climate Variables and Extreme Climate Indices for the MENA Domain. *Climate Services, 38*, 100564. https://doi.org/10.1016/j.cliser.2025.100564

Bell-James, J., and Collins, B. (2022). Human Rights and Climate Change Litigation: Should Temporal Imminence Form Part of Positive Rights Obligations? *Journal of Human Rights and the Environment, 13*(1), 212-237. https://doi.org/10.4337/jhre.2022.01.09

Bhardwaj, C. (2021). Ioane Teitiota v New Zealand (advance unedited version), CCPR/C/127/D/2728/2016, UN Human Rights Committee, 7 January 2020. *Environmental Law Review, 23*(3), 263-271. https://doi.org/10.1177/14614529211039469

Bruno, G. C., Palombino, F. M., and Di Stefano, A. (Eds). (2019). *Migration Issues Before International Courts and Tribunals.* Rome: CNR Edizioni.

Byrne, R. (Ed.). (2008). *The Refugee Law Reader: Cases, Documents, and Materials* (4th ed.). Budapest: Hungarian Helsinki Committee.

Cantor, D., Burson, B., Aycock, B., Tan, N. F., Anastasiou, T., Arnold-Fernandez, E., Field, C., Hansen-Lohrey, C., Kälin, W., Kane, G., Miron, S., Rao, M., Sánchez Mojica, B., Scissa, C., Weerasinghe, S., and Wood, T. (2024). International Protection, Disasters and Climate Change. *International Journal of Refugee Law, 36*(1-2), 176-197. https://doi.org/10.1093/ijrl/eeae012

Clements, P. (2024). International Climate Migrant Policy and Estimates of Climate Migration. *Sustainability, 16*(23), 10287. https://doi.org/10.3390/su162310287

Committee on the Rights of the Child. (2023). General Comment No. 26 (2023) on Children's Rights and the Environment With a Special Focus on Climate Change (CRC/C/GC/26). Retrieved from https://www.ohchr.org/en/documents/general-comments-and-recommendations/crccgc26-general-comment-no-26-2023-childrens-rights

European Commission. (2024). Pact on Migration and Asylum. Retrieved from https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en

European Parliament and Council. (2024a). Directive (EU) 2024/1346 of 14 May 2024 Laying Down Standards for the Reception of Applicants for International Protection (Recast Reception Conditions Directive). *Official Journal of the European Union, 50*, 1-35.

European Parliament and Council. (2024b). Regulation (EU) 2024/1347 of 14 May 2024 On Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (Recast Qualification Regulation). *Official Journal of the European Union, 50*, 1-34.

European Parliament and Council. (2024c). Regulation (EU) 2024/1348 of 14 May 2024 Establishing a Common Procedure for International Protection in the Union and Repealing Directive 2013/32/EU (Recast Asylum Procedures Regulation). *Official Journal of the European Union*, *50*, 1-76.

Fiddian-Qasmiyeh, E., Loescher, G., Long, K., and Sigona, N. (Eds.). (2014). *The Oxford Handbook of Refugee and Forced Migration Studies*. Oxford: Oxford University Press. https://doi.org/10.1093/oxfordhb/9780199652433.001.0001

Foster, M., and McAdam, J. (2022). Analysis of "Imminence" in International Protection Claims: Teitiota v New Zealand and Beyond. *International and Comparative Law Quarterly, 71*(4), 975-982. https://doi.org/10.1017/S0020589322000367

Fransen, S., Hunns, A., Jaber, T., and Janz, T. (2025). Climate Risks for Displaced Populations: A Scoping Review and Research Agenda. *Journal of Refugee Studies, 38*(3), 722-741. https://doi.org/10.1093/jrs/feae074

Haraschuk, V., Zelinska, Y., Spasenko, V., and Shulga, I. (2020). Information Component of the Environmental Policy of Ukraine: Current Status and Development Potential. *European Journal of Sustainable Development, 9*(2). https://doi.org/10.14207/ejsd.2020.v9n2p69

Human Rights Committee. (2004). General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (CCPR/C/21/Rev.1/Add.13). Retrieved from https://digitallibrary.un.org/record/533996?v=pdf

Human Rights Committee. (2018). General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, On the Right to Life (CCPR/C/GC/36). Retrieved from https://www.ohchr.org/en/calls-for-input/general-comment-no-36-article-6-right-life

Human Rights Committee. (2020). Views Adopted by the Committee Under Article 5 (4) of the Optional Protocol, Concerning Communication No. 2728/2016 United Nations. Retrieved from https://digitallibrary.un.org/record/3979204?v=pdf

Human Rights Committee. (2022). Views Adopted by the Human Rights Committee Under Article 5(4) of the Optional Protocol to the International Covenant on Civil and Political Rights (CCPR/C/135/D/3624/2019). Retrieved from https://digitallibrary.un.org/record/4027144?v=pdf

Koçi, J. (2025). Role of the European Union in Addressing Climate Change Migration and Protecting Immigrants' Rights. *Social & Legal Studies, 8*(3), 165-176. https://doi.org/10.32518/sals2.2025.165

Korolova, V. V., Dolhoruchenko, K. O., Oliinyk, O. B., Glukh, M. V., and Hrytsiak, I. A. (2022). International Legal Aspects of Migration in the EU: Policies and Standards. *International Social Science Journal,* 72(246), 1071-1083. https://doi.org/10.1111/issj.12376

Laki, D. M. (2022). The Case of Ioane Teitiota v New Zealand at the Human Rights Committee: A Common Sense Approach. *Proceedings of the ASIL Annual Meeting, 115*, 161-163. https://doi.org/10.1017/amp.2021.148

Lindegaard, L. S., Jarawura, F. X., and Kleist, N. (2025). Climate Migration Management? Contrasting International Policy Approaches With Evidence From Ghana. *Climate Policy, 25*(5), 691-706. https://doi.org/10.1080/14693062.2024.2411326

Lytvyn, N., Andrushchenko, H., Zozulya, Y. V., Nikanorova, O. V., and Rusal, L. M. (2022). Enforcement of Court Decisions as a Social Guarantee of Protection of Citizens Rights and Freedoms. *Prawo i Więź, 1*(39), 80-102. https://doi.org/10.36128/priw.vi39.351

Mah, A. (2021). Future-Proofing Capitalism: The Paradox of the Circular Economy for Plastics. *Global Environmental Politics, 21*(2), 121-142. https://doi.org/10.1162/glep_a_00594

Matera, C., and Taylor, A. (Eds.). (2014). *The Common European Asylum System and Human Rights: Enhancing Protection in Times of Emergencies (CLEER Working Paper 2014/7).* The Hague: T. M. C. Asser Instituut.

McMichael, C. (2023). Climatic and Environmental Change, Migration, and Health. *Annual Review of Public Health, 44*, 171-191. https://doi.org/10.1146/annurev-publhealth-071421-045148

Piguet, E. (2022). Linking Climate Change, Environmental Degradation, and Migration: An Update After 10 years. *Wiley Interdisciplinary Reviews: Climate Change, 13*(1), e746. https://doi.org/10.1002/wcc.746

Rudolph, L., Koubi, V., and Fieandt, J., (2022). Environmental Change and Migration Aspirations: Evidence From Bangladesh. *Global Environmental Change, 91,* 102966. https://doi.org/10.1016/j.gloenvcha.2025.102966

Sabirin, A., Bayuaji, A. P., and Keumala, D. (2024). Legal Vacuums: The Challenge of Protection for Climate Refugees. *Lampung Journal of International Law, 6*(2), 95-108. https://doi.org/10.25041/lajil.v6i2.3421

Storey, H. (2021). Climate Change, Disasters, and the Refugee Convention. *International Journal of Refugee Law, 33*(1), 170-179. https://doi.org/10.1093/ijrl/eeab028

Thornton, F. (2022). The Future is Now: Climate Displacement and Human Rights Obligations – a Note on Recent Developments in the UN Human Rights Committee. *Frontiers in Climate, 4*, 1061474. https://doi.org/10.3389/fclim.2022.1061474

UN High Commissioner for Refugees. (2016). Guidelines on International Protection No. 12: "Guidelines on Refugee Protection Considerations Relating to Disaster

Displacement and Climate Change" (HCR/GIP/16/12). Retrieved from http://www.refworld.org/docid/583595ff4.html

UN High Commissioner for Refugees. (2019). 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. Retrieved from https://www.refworld.org/docid/5cb474b27.html

United Nations General Assembly. (1966). International Covenant on Civil and Political Rights. Retrieved from https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

United Nations General Assembly. (1967). The 1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugees. Retrieved from https://www.unhcr.org/3b66c2aa10

United Nations General Assembly. (1984). Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Retrieved from https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en

Vanhala, L., & Calliari, E. (2022). Governing People on the Move in a Warming World: Framing Climate Change Migration and the UNFCCC Task Force on Displacement. *Global Environmental Change, 76*, 102578. https://doi.org/10.1016/j.gloenvcha.2022.102578

Waters, M. C. (2025). Preparing for Climate Migration and Integration: A Policy and Research Agenda. *Journal of Ethnic and Migration Studies, 51*(1), 4-23. https://doi.org/10.1080/1369183X.2024.2438449

Wattihuleuw, A. J., Anwar, A., and Tuhulele, P. (2024). Legal Status of Climate Refugees: Is It Regulated in International Law? *Uti Possidetis: Journal of International Law, 5*(3), 390-419. https://doi.org/10.22437/up.v5i3.33591

IZBJEGLICE I MIGRANTI UZROKOVANI KLIMATSKIM PROMJENAMA: KONCEPTUALNE RAZLIKE

Anatolii Getman, V. Steshenko, V. Shekhovtsov, O. Tarasov and Svitlana Kozar

Sažetak

Cilj ovog rada je iscrtati pravnu razliku između koncepta izbjeglica i migranata uzrokovanih klimatskim promjenama kroz osnovnu pravnu analizu, a zatim razviti zakonodavni model za zaštitu osoba raseljenih zbog klimatskih promjena izvan okvira statusa izbjeglice na temelju međunarodnog prava o ljudskim pravima i regulatornih pristupa Europske unije. Ovo istraživanje provedeno je u razdoblju 2024. – 2025. kao doktrinarno i analitičko pravno istraživanje temeljeno na namjerno odabranim primjerima iz međunarodnog i prava EU-a te kvazisudskim odlukama. Unutar parametara pozitivnog prava rekonstruira instituciju izbjeglice prema Konvenciji iz 1951. zajedno s njezinim Protokolom iz 1967. te sustavno identificira pravne granice njezine primjenjivosti na raseljavanje uzrokovano klimatskim promjenama bez pribjegavanja ekspanzivnom tumačenju. Nalazi pokazuju da su ključni strukturni elementi statusa izbjeglice prvenstveno povezani s progonom od strane države državljanstva ili države prebivališta. Pokazalo se da učinkovita zaštita osoba raseljenih zbog klimatskih promjena leži izvan prava izbjeglica u primarnom međunarodnom pravu o ljudskim pravima putem autonomne primjene zabrane vraćanja kada postoji stvarni rizik od ozbiljne štete. U tom smislu, na temelju načela najboljeg interesa djeteta, posebnu pozornost treba posvetiti zaštiti prava djece klimatskih migranata i djece izbjeglica. Analiza normativnog okvira EU prikazuje trenutne europske pristupe kao djelomično usklađene s međunarodnim standardima, ali istovremeno otkriva strukturna ograničenja postojećeg modela azila u rješavanju raseljavanja uzrokovanog klimatskim promjenama. Rezultati su također relevantni za nacionalne pravne sustave koji prolaze kroz postkonfliktnu i pristupnu transformaciju. Nalazi doprinose razvoju doktrine međunarodnog migracijskog prava, poboljšanju praksi EU u provedbi zakona i nacionalnim pristupima budućoj pravnoj prilagodbi.

Ključne riječi: *dječja prava, izbjeglice, ljudska prava, najbolji interes djeteta, zabrana vraćanja*

FLÜCHTLINGE UND KLIMABEDINGTE MIGRANTEN: EINE BEGRIFFLICHE UNTERSCHEIDUNG

Anatolii Getman, V. Steshenko, V. Shekhovtsov, O. Tarasov and Svitlana Kozar

Zusammenfassung

Ziel dieser Arbeit ist es, anhand einer grundlegenden rechtlichen Analyse eine rechtliche Unterscheidung zwischen dem Begriff der Flüchtlinge und dem der klimabedingten Migranten zu treffen und anschließend auf der Grundlage der internationalen Menschenrechtsnormen und der regulatorischen Ansätze der Europäischen Union ein Gesetzgebungsmodell für den Schutz von Menschen zu entwickeln, die aufgrund des Klimawandels vertrieben wurden und nicht unter den Flüchtlingsstatus fallen. Diese Untersuchung wurde in den Jahren 2024–2025 als rechtswissenschaftliche und analytische Forschung auf der Grundlage gezielt ausgewählter, nicht zufälliger Stichproben aus dem Völkerrecht und dem EU-Recht sowie aus quasi-gerichtlichen Entscheidungen durchgeführt. Sie rekonstruiert innerhalb der Parameter des positiven Rechts die Flüchtlingsinstitution gemäß der Konvention von 1951 zusammen mit ihrem Protokoll von 1967 und ermittelt systematisch die rechtlichen Grenzen ihrer Anwendbarkeit auf klimabedingte Vertreibung, ohne auf eine expansive Auslegung zurückzugreifen. Die Ergebnisse zeigen, dass zentrale strukturelle Elemente des Flüchtlingsstatus in erster Linie mit der Verfolgung durch den Bürgerrechtsstaat oder den Aufenthaltsstaat zusammenhängen. Es hat sich gezeigt, dass ein wirksamer Schutz für Menschen, die durch den Klimawandel vertrieben wurden, außerhalb des Flüchtlingsrechts in den primären internationalen Menschenrechtsverträgen durch eine eigenständige Anwendung des Grundsatzes der Nichtzurückweisung

gewährleistet wird, wenn eine reale Gefahr schwerwiegender Schäden besteht. In diesem Zusammenhang sollte auf der Grundlage des Grundsatzes des Kindeswohls dem Schutz der Rechte von Kindern, die als Klimamigranten oder Flüchtlingskinder gelten, besondere Aufmerksamkeit gewidmet werden. Die Analyse des normativen Rahmens der EU zeigt, dass die derzeitigen europäischen Ansätze zwar teilweise mit internationalen Standards im Einklang stehen, deckt jedoch gleichzeitig strukturelle Grenzen des bestehenden Asylmodells bei der Bewältigung klimabedingter Vertreibung auf. Die Ergebnisse sind auch für nationale Rechtssysteme relevant, die sich in einer Phase des Wandels nach Konflikten oder im Zusammenhang mit einem Beitritt befinden. Die Erkenntnisse tragen zur Weiterentwicklung der Lehre im internationalen Migrationsrecht, zur Verbesserung der Rechtsdurchsetzungspraxis in der EU sowie zu nationalen Ansätzen für künftige rechtliche Anpassungen bei

Schlüsselwörter: *Flüchtlinge, Grundsatz der Nichtzurückweisung, Kinderrechte, Kindeswohl, Menschenrechte*