

IN SUPPORT OF THE DEBATE ON THE TERMINOLOGY RELATED TO THE TERMS CLIMATE REFUGEES, CLIMATE MIGRANTS, ENVIRONMENTALLY DISPLACED PERSONS AND SIMILAR TERMS*

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ABSTRACT

The paper deals with the terminological issues concerning the growing phenomenon of people fleeing their homes and states because they can no longer live normal lives or any lives at all due to the impact of climate change. This is particularly the case in poor coastal and small island states due to rising sea levels. To date, various terms are used in the scientific literature to describe these people, such as climate refugees, climate migrants, environmentally displaced persons, ecological migrants or eco-migrants, climate induced migrants, seasonal migrants, low-lying peoples, forced climate migrants, climate change-related migrants, survival refugees, etc. These terms are also often used in reports by international governmental and non-gov-

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environmental organisations, in political speeches and texts, in the media, on social networks, by activists, etc. Since there is no academic and political consensus on the appropriate term, there is also no generally accepted consensus on what exactly constitutes this category of vulnerable people. The paper provides an analysis of existing (proposed) terms and concepts and warns that some of them are ill-suited, misleading, inaccurate, and/or do not comply with (international) law and official legal terminology. This is particularly true for the term climate refugees, as the term refugee under the 1951 Refugee Convention and its 1967 Protocol does not include displacement caused by environmental factors. Without uniform terms, definitions of concepts and clearly stated rights in international and national legal systems, these multi-million groups of people cannot benefit from appropriate and effective legal protection. Based on a critical analysis of the elements of the most commonly used terms and concepts, the paper proposes to discard some of them and advocates for the legally and politically most acceptable solution.

Keywords: climate refugees, climate migrants, environmentally displaced persons, legal terminology, international law

1. INTRODUCTION

The issue of climate change and its impact on people's lives and society in general has become increasingly relevant in the last few decades. Numerous papers have been written in recent years, including those on people who have left or had to leave their homes due to climate change. Although climate change itself does not trigger the movement of persons, some of its effects, such as natural disasters, environmental degradation, sea level rise, or conflicts over resources have the potential to do so.¹ Some authors, however, challenge the factual evidence showing that environmental degradation causes large human migrations.² For this reason, some scholars believe that the key problem is perhaps not environmental change itself, but the ability of different communities and countries to cope with it.³ Some authors also think that migration is an individual, family or community measure of adaptation and that it should be looked at positively by states and that such migration needs to be managed.⁴ However, this type of displacement or migration is usually neither seen positively nor managed by states. The reality is that figures over the years show that there are more people displaced by environment-related disasters than by armed conflicts.⁵

¹ Kälén, W.; Schrepfer, N., *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches*, United Nations High Commissioner for Refugees, Division of International Protection, Geneva, 2012, p. 6.

² For more details, see: Lopez, A., *The Protection of Environmentally-Displaced Persons in International Law*, Environmental Law, Vol. 37, No. 2, 2007, pp. 365-410, p. 376.

³ *Ibid.*

⁴ Kälén; Schrepfer, *op. cit.*, note 1, p. 60.

⁵ Borges, I. M., *Environmental Change, Forced Displacement and International Law - From Legal Protection Gaps to Protection Solutions*, Routledge, New York, 2019, p. 17.

Relocation of people due to climate change is not a new phenomenon. People have been moving for thousands of years. In the past, both sudden-onset climate events (such as extreme storms and floods) and more gradual conditions of change (such as protracted droughts) are known to have led to population displacements and distress migration.⁶ Migration can occur individually (at a family level) or in groups (involves larger numbers of people). In addition to climate change and natural disasters, some also flee from armed conflict and violence. In some cases, natural disasters have already occurred or are expected to occur in the near future. Some have already been seriously threatened by climate change. Many Pacific island states, which are on average only one or two meters above sea level, will become uninhabited before they disappear entirely under the sea.⁷ Migrations are often a combination of a number of threats - floods, droughts, rising sea levels, destructive winds and the like, global warming in general, difficult economic conditions, and possibly armed conflict, violence, and instability. Thus, migrations are often motivated not by a single cause, but by a combination of them.

For example, the aforementioned Pacific island states and the peoples inhabiting them are particularly at risk. Some theorists propose that, invoking the right of the peoples to self-determination, these people should be provided with a different, dislocated space, appropriate and similar to their natural environment. Thus, for example, the peoples of the Pacific island states such as Tuvalu, the Marshall Islands and Kiribati are suggested to find their future in the territory of e.g. Australia and New Zealand. In this context, “planned relocation” is alluded to in the sense that, presumably, the state or states, and international organisations, organise large-scale migrations of a group of people from one location to another. We find such proposals distasteful, almost bizarre. Not only is it hard to imagine that states will give up parts of their territory or sovereignty, but even if they do so, it is profoundly unethical and cold-hearted to propose such solutions without taking into account the centuries-old history that these peoples have had in the areas they inhabit. It seems much easier for those who advocate such a solution to relocate the entire population and think that they have solved the problem than to invest a great deal of time and energy to stop massive pollution and climate change caused by only a few countries, albeit major world powers. A considerable number of inhabitants of these Pacific islands have already moved. It is a combination of economic reasons, the search for a better life, but also the fact that the future on these archipelagos is very uncertain.

⁶ McLeman, R., *Climate Change Migration, Refugee Protection, and Adaptive Capacity-Building*, McGill International Journal of Sustainable Development Law and Policy, Vol. 4, No. 1, pp. 1-18, p. 7.

⁷ Ross, N. J., *Low-Lying States, Climate Change-Induced Relocation, and the Collective Right to Self-Determination*, Faculty of Law, University of Wellington, Wellington, 2019, p. 1.

Law, especially international law, usually lags behind social phenomena, and difficulties and controversies arise over terminology, conceptualisation and operationalisation of new social phenomena, leading to gaps in legal protection. This is also the case with displacement of persons caused by climate change. Borges notes that human mobility, which is forced and exacerbated by environmental factors, blurs the traditional distinctions between refugees, internally displaced people, and international immigrants.⁸ In reading the relevant literature, one notices that the terminology related to the concept of persons or peoples leaving or being forced to leave their homes due to climate change or other environmental factors is used in a rather convoluted manner. Most of the papers are limited to repeating some previous terms and definitions and do not offer any new conceptual or operational solutions. This paper will provide an overview of the most important terms and concepts given in the relevant literature, critically analyse them and determine more adequate terminological solutions. In the second section of the paper, we will address the relationship between climate change and human migration. In the third section, we will show how positive international law deals with the challenges of climate change. In the fourth section, we will present the problem of inconsistent terminology. In the fifth chapter, we will critically analyse the elements of the most commonly used terms and finally, we will make a terminological proposal that seems to us to be the most adequate at the moment.

2. CLIMATE CHANGE AND MIGRATION

Climate change, environmental events and displacement/migration are interrelated phenomena whose mutual relationship is extremely complex. It is well known that, as a result of the rise in temperature, mainly due to the burning of fossil fuels (coal, oil and gas) and the production of greenhouse gases, there are systematic and dramatic climate changes that negatively generate new issues and problems. Climate change has caused substantial damages, and increasingly irreversible losses, in terrestrial, freshwater, cryospheric, and coastal and open ocean ecosystems.⁹ Coral reefs are being massively destroyed. On the one hand, deserts are spreading, and on the other, massive flooding occurs in some other parts of the world. Water salinisation, drought, melting of polar ice, rising tide levels, dying ocean currents, deforestation and forest destruction, and fearsome winds and storms are just some examples of the consequences of catastrophic climate change and man's careless treatment of the nature around us. Plant and animal species are dying out and biodiversity is decreasing. And all this because, according to the World Meteorolog-

⁸ Borges, *op. cit.*, note 5, p. 17.

⁹ *The Synthesis Report: The Intergovernmental Panel on Climate Change*, IPCC AR6 SYR, 2023, p. 5.

ical Organisation, the Earth is “only” 1.1°C warmer than it was at the end of the 19th century.¹⁰ Most of the warming occurred in the past 40 years, with the seven most recent years being the warmest.¹¹ Global warming will continue to increase in the near term (2021-2040), mainly due to increased cumulative CO2 emissions in almost all scenarios and modelled pathways considered.¹²

Of the 186 countries assessed in a recent survey on climate vulnerability, Chad was rated as facing the greatest peril. The fact that this country has one of the fastest-growing populations in the world only compounds the problem. In the future, environmental changes could have enormous effects on many populations, especially those in coastal and low-lying areas such as Vietnam, the Netherlands and certain parts of the US. According to Justin Ginnett from the Internal Displacement Monitoring Centre (IDMC), people are already “now twice as likely to be displaced than they were in the 1970s”. This is due to the combined effect of rapid population growth, urbanisation and exposure to natural disasters.¹³

Climate and weather extremes are increasingly driving displacement in Africa, Asia, North America (high confidence), and Central and South America (medium confidence), with small island states in the Caribbean and South Pacific being disproportionately affected relative to their small population size (high confidence).¹⁴ According to statistics published by the IDMC, every year since 2008, an average of 26.4 million persons around the world have been forcibly displaced by floods, windstorms, earthquakes or droughts.¹⁵ This is equivalent to one person being displaced every second. The number of international migrants worldwide has continued to grow rapidly in recent years, reaching 258 million in 2017, up from 220 million in 2010 and 173 million in 2000.¹⁶ An estimated 200,000 Bangladeshis, who become homeless each year due to river bank erosion, cannot easily apply for resettlement in another country.¹⁷ It also means that the residents of the small islands of Kiribati, Nauru and Tuvalu, where one in ten persons has migrat-

¹⁰ Official web pages of the World Meteorological Organisation, [<https://public.wmo.int/en/media/press-release/2020-was-one-of-three-warmest-years-record>], Accessed 25 May 2023.

¹¹ *2020 Tied for Warmest Year on Record*, NASA Analysis Shows, official web pages of NASA, [<https://www.nasa.gov/press-release/2020-tied-for-warmest-year-on-record-nasa-analysis-shows>], Accessed 25 May 2023.

¹² *The Synthesis Report - The Intergovernmental Panel on Climate Change*, *op. cit.*, note 9, p. 12.

¹³ Apap, J., *The concept of ‘climate refugee’: towards a possible definition*, European Parliamentary Research Service, PE 621.893 – February 2019, p. 1 [[https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621893/EPRS_BRI\(2018\)621893_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621893/EPRS_BRI(2018)621893_EN.pdf)], Accessed 25 May 2023.

¹⁴ *The Synthesis Report - The Intergovernmental Panel on Climate Change*, *op. cit.*, note 9, p. 5.

¹⁵ Apap, *op. cit.*, note 13, p. 1.

¹⁶ *Ibid.*, p. 2.

¹⁷ *Ibid.*

ed within the last decade, cannot be classified as refugees, even though those who remain are “trapped” in deteriorating environmental conditions.¹⁸

The number of storms, droughts and floods has tripled over the last 30 years with devastating effects on vulnerable communities, particularly in the developing world.¹⁹ In 2008, 20 million persons were displaced by extreme weather events, compared with 4.6 million internally displaced by conflict and violence in the same period.²⁰ Gradual changes in the environment tend to have an even greater impact on the movement of people than extreme events.²¹ For instance, over the last thirty years, twice as many people have been affected by droughts as by storms (1.6 billion compared with approx. 718 million).²² Future forecasts vary from 25 million to 1 billion environmental migrants by 2050, moving either within their countries or across borders, on a permanent or temporary basis, with 200 million being the most widely cited estimate.²³

It is safe to say that (1) the number of persons is significant and likely to increase, and (2) most of the movement will take place inside countries.²⁴ Kälin and Schrepfer have recognised the following five key scenarios that can trigger adaptive migration and/or displacement: (1) sudden-onset hydro-meteorological disasters, (2) slow-onset environmental degradation, (3) small island states being destroyed in large parts or as a whole by rising sea levels, (4) areas becoming unfit for human habitation either as a consequence of mitigation or adaptation measures (e.g., planting forests to serve as carbon sinks) or because they have been identified as high risk zones in case of hydro-meteorological disasters, and (5) violence and armed conflict caused by shrinking natural resources.²⁵

It is difficult to distinguish between environmental/climate change reasons and other reasons, especially humanitarian, political, social or economic reasons. There are many migration management solutions that can be used to respond to the challenges posed by climate change, environmental degradation and disasters related to international migration movements, and that can provide status to people migrating in the context of climate change impacts, such as humanitarian visas,

¹⁸ *Ibid.*

¹⁹ *A Complex Nexus*, Official web pages of the International Organisation for Migration, [<https://www.iom.int/complex-nexus>], Accessed 25 May 2023.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ This figure equals the current estimate of international migrants worldwide. *Ibid.*

²⁴ Kälin; Schrepfer, *op. cit.*, note 1, p. 77.

²⁵ *Ibid.*, pp. 77-78.

temporary protection, residence permits, regional and bilateral free movement agreements, and the like.²⁶

3. CLIMATE CHANGE AND INTERNATIONAL LAW

Climate change itself is a complex and multifaceted phenomenon. It raises physical, scientific, economic, social, political and cultural issues along with legal ones.²⁷ All these problems and challenges brought by climate change have led to the need to adopt international treaties and other documents that regulate this matter. In the context of climate change, states, according to present international law, have three types of obligations, i.e., mitigation, adaptation and protection.²⁸ Mitigation-related obligations include the task of mitigating the degree of climate change, in particular by reducing greenhouse gas emissions.²⁹ Adaptation implies finding the best ways to adapt to the challenges and threats that climate change brings, while protection is understood as the obligation to secure the rights and address the (humanitarian) needs of people affected by negative effects of climate change.³⁰ The obligation to reduce climate change and adapt to the challenges they bring still fails to enable people to stay in threatened areas. In this context, the issue of state obligations in the area of protection of the rights of people affected by negative effects of climate change becomes particularly important.

Given that the climate change, desertification and biodiversity loss are interlinked, the result of the 1992 Earth Summit in Rio de Janeiro, Brazil, are three sister “Rio Conventions”: the 1992 United Nations Framework Convention on Climate Change (UNFCCC)³¹, the 1992 Convention on Biological Diversity (CBD)³² and the 1994 United Nations Convention to Combat Desertification (UNC-CD)³³. All three of them embrace the concept of sustainable development. Since

²⁶ Ionesco, D., *Let's Talk about Climate Migrants, Not Climate Refugees*, 2019. [<https://www.un.org/sustainabledevelopment/blog/2019/06/lets-talk-about-climate-migrants-not-climate-refugees/>], Accessed 25 May 2023.

²⁷ Brunée, J. *et al.*, *Introduction*, in: Lord, R. *et al.* (eds.), *Climate Change Liability – Transnational Law and Practice*, Cambridge University Press, Cambridge, 2012, pp. 3-7, p. 3.

²⁸ Kälín; Schrepfer, *op. cit.*, note 1, p. 17.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ United Nations Framework Convention on Climate Change (UNFCCC), *United Nations Treaty Series*, Vol. 1771, p. 107.

³² Convention on Biological Diversity (CBD), *United Nations Treaty Series*, Vol. 1760, p. 79.

³³ United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, *United Nations Treaty Series*, Vol. 1954, p. 3.

then, that concept has been accepted as a policy principle in many states and it appears in most international statements on the environment and development.³⁴

The ultimate objective of the UNFCCC and any related legal instrument is to achieve, in accordance with the relevant provisions of the UNFCCC, stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. This level should be achieved within a period of time sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner (Art. 2 of the UNFCCC). Article 7 of the UNFCCC established the Conference of the Parties (COP), a supreme decision-making body of the UNFCCC. All states that are Parties to the UNFCCC are represented at the COP, at which they review the implementation of the UNFCCC and any other legal instruments that the COP adopts and take decisions necessary to promote the effective implementation of the UNFCCC.³⁵

However, as its name suggests, the UNFCCC is a framework convention, which means that it was created as a result of a compromise between the conflicting interests of states, that “its purpose is to set the general tone for the future climate change discussions”³⁶ and that it does not contain firm and clearly defined obligations of the state parties. Therefore, the Kyoto Protocol³⁷ was adopted in 1997, which operationalises the UNFCCC. The Kyoto Protocol set specific targets and timetables for reducing emissions of six greenhouse gases. This Protocol binds industrialised countries and economies in transition to limit and reduce greenhouse gases emissions in accordance with agreed individual targets. The Kyoto Protocol was amended in 2012 by the adoption of the Doha Amendment³⁸.

The Paris Agreement³⁹ was adopted at the UN Climate Change Conference (COP21) held in Paris on 12 December 2015. The Paris Agreement is a legally binding international treaty on climate change that aims to strengthen the global

³⁴ Verheyen, R., *Climate Change Damage and International Law – Prevention Duties and State Responsibility*, Martinus Nijhoff Publishers, Leiden/Boston, 2005, p. 77.

³⁵ For more details, see official pages of the Conference of the Parties (COP), [<https://unfccc.int/process/bodies/supreme-bodies/conference-of-the-parties-cop>], Accessed 25 May 2023.

³⁶ Johnsson, A., *Climate Change in International Environmental Law*, Eastern and Central Europe Journal on Environmental Law, Vol. 17, No. 2, 2013, pp. 1-36, p. 11.

³⁷ Kyoto Protocol to the United Nations Framework Convention on Climate Change, *United Nations Treaty Series*, Vol. 2303, p. 162.

³⁸ Doha Amendment to the Kyoto Protocol, 8 December 2012, United Nations, C.N.718.2012.TREATIES-XXVII.7.c.

³⁹ Paris Agreement, 12 December 2015, *United Nations Treaty Series*, Vol. 3156.

response to the threat of climate change in the context of sustainable development and efforts to eradicate poverty, including by: (a) holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognising that this would significantly reduce the risks and impacts of climate change, (b) increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production, and (c) making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development (Art. 2 of the Paris Agreement).

In the context of climate change, the following global agreements should also be mentioned: the Sendai Framework for Disaster Risk Reduction (2015-2030)⁴⁰, the Addis Ababa Action Agenda (2015)⁴¹, the New Urban Agenda (2016)⁴², the Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (2016)⁴³, and the 2030 Agenda for Sustainable Development (2015)⁴⁴. If achieved, these agreements would reduce climate change and its impacts on health, wellbeing, migration and conflict.⁴⁵

Although Article 4(4) of the UNFCCC obliges developed state parties and other developed parties listed in Annex 1 to assist developing state parties that are particularly vulnerable to the adverse effects of climate change in meeting the costs of adapting to those adverse effects, the issues related to the protection obligation, “and with it, the issue of displacement triggered by the effects of climate change has been largely neglected in international discussions thus far”.⁴⁶ These international documents are mostly concerned with mitigating and adapting to climate change and are focused on reducing greenhouse gas emissions, rather than protecting people or nations already affected by climate change.

⁴⁰ General Assembly Resolution: Sendai Framework for Disaster Risk Reduction 2015-2030, 3 June 2015, A/RES/69/283.

⁴¹ General Assembly Resolution: Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda), 27 July 2015, A/RES/69/313.

⁴² General Assembly draft resolution: New Urban Agenda, 21 November 2016, A/71/L.23.

⁴³ Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, 15 October 2016, United Nations, C.N.872.2016.TREATIES-XXVII.2. f.

⁴⁴ General Assembly Resolution: Transforming our world: the 2030 Agenda for Sustainable Development, 25 September 2015, A/RES/70/1.

⁴⁵ *Synthesis Report on the IPCC Sixth Assessment Report (AR 6), Longer Report*, Intergovernmental Panel on Climate Change, 2023, p. 18.

⁴⁶ Kälín; Schrepfer, *op. cit.*, note 1, p. 21.

4. THE PROBLEM OF NON-UNIFORM TERMINOLOGY

In the last decade or so, various terms have been used in the media, on social networks, in political speeches, but also in scientific papers and official documents of states and international organisations to refer to individuals and groups of people leaving their homes and places of residence due to catastrophic climate events that have already occurred or are imminent. These various terms include “climate refugees”⁴⁷, “climate migrants”⁴⁸, “environmental refugees”⁴⁹, “environmental migrants” (“eco-migrants”)⁵⁰, “survival migrants”⁵¹, or compound words such as “climate-change refugees”⁵², “climate induced migration” (or “climate induced

⁴⁷ See e.g.: Balesh, R., *Submerging Islands: Tuvalu and Karibati as Case Studies Illustrating the Need for a Climate Refugee Treaty*, *Environmental and Earth Law Journal*, Vol. 5, 2015, pp. 78-112; Dutta, S., *A Tale of Climate Refugee Vis-A-Vis Responsibility Shifting and Responsibility Sharing*, *Indian Journal of Law and Justice*, Vol. 11, No. 1, 2020, pp. 183-201; Popescu, A., *The First Acknowledged Climate Change Refugee?*, *Romanian Journal of International Law*, Vol. 23, 2020, pp. 96-116; Haris, A., *How a Universal Definition May Shape the Looming Climate Refugee Crisis*, *Human Rights Brief*, Vol. 24, No. 3, 2021, pp. 194-197; Zink, I., *Storm Warning: New Zealand's Treatment of "Climate Refugee" Claims as a Violation of International Law*, *American University International Law Review*, Vol. 37, No. 2, 2022, pp. 441-482; Kent, A.; Behrman, S., *Facilitating the Resettlement and Rights of Climate Refugees - An Argument for Developing Existing Principles and Practices*, Routledge, New York, 2018, p. 5.

⁴⁸ See e.g.: Marinică, C. E., *The European Union Climate Neutrality and Climate Migrants*, *Law Review*, Vol. XI, No. 2, 2021, pp. 2-13; de Salles Cavedon-Capdeville, F.; Andreola Serraglio, D., *Lives on the Move: Human Rights Protection Systems as Justice Spaces for Climate Migrants*, *Brazilian Journal of International Law*, Vol. 19, No. 1, 2022, pp. 105-126; Corti Varela, J., *Regional Protection of Climate Migrants in Latin America*, *Revista Espanola de Derecho Internacional*, Vol. 73, No. 2, 2021, pp. 409-416; Felipe Perez, B., *The European Climate Visa as a Legal Instrument for the Protection of Climate Migrants*, *Revista Espanola de Derecho Internacional*, Vol. 74, No. 1, 2022, pp. 193-200.

⁴⁹ See e.g.: Myers, N., *Environmental Refugees: a Growing Phenomenon of the 21st Century*, *Philosophical Transactions: Biological Sciences*, No. 357, 2002, pp. 609-613, p. 609; Collyer, M., *Geographies of Forced Migration, in Transition*, in: Fiddian-Qasbiyeh, E. et al. (eds.), *The Oxford Handbook of Refugee and Forced Migration Studies*, Oxford University Press, 2014, pp. 112-124, p. 1 and the following pages; Joseph, S.; McBeth, A., *Research Handbook on International Human Rights Law*, Edward Elgar, 2010, p. 226.

⁵⁰ Compton, B., *The Rising Tide of Environmental Migrants: Our National Responsibilities*, *Colorado Natural Resources, Energy & Environmental Law Review*, Vol. 25, No. 2, 2014, pp. 357-386; Murray, S., *Environmental Migrants and Canada's Refugee Policy*, *Refuge: Canada's Journal on Refugees*, Vol. 27, No. 1, 2010, pp. 89-102; Koubi, V. et al., *The Determinants of Environmental Migrants' Conflict Perception*, *International Organisation*, Vol. 72, No. 4, 2018, pp. 905-936; Caligiuri, A., *Possible Basis for Granting Humanitarian Protection to "Environmental Migrants" in Italy?*, *The Italian Yearbook of International Law*, Vol. 30, 2020, pp. 458-462; Passarini, F., *Protection of Environmental Migrants in Italy in Light of the Latest Jurisprudential Developments*, *The Italian Yearbook of International Law*, Vol. 31, pp. 446-452.

⁵¹ Betts, A., *Survival Migration: A New Protection Framework*, *Global Governance*, Vol. 16, No. 3, 2010, pp. 361-382.

⁵² McLeman, *op. cit.*, note 6, p. 12.

migrants”⁵³, “climate change-related migration”⁵⁴, “environmentally displaced persons”⁵⁵ (or “environmentally related displacement”⁵⁶), “victims of environmental harm”⁵⁷, and even terms like “persons displaced by climate change”⁵⁸, “persons displaced by the environment”⁵⁹, “people displaced by climate change”⁶⁰, “trapped populations”⁶¹ and “forced climate migrants”⁶².

Some terms place emphasis on the area affected by the climate threat, such as “low-lying people”⁶³, “disappearing states or sinking states”⁶⁴. Some compound terms place emphasis on law, so there are terms like “forced climate migrant’s law”.⁶⁵ What they all have in common is that they recognise people threatened by climate/environmental change in general or by a specific catastrophic climate/environmental event, with some focusing on these individuals or groups (which

⁵³ See e.g.: Francis, R. A., *Migrants Can Make International Law*, Harvard Environmental Law Review, Vol. 45, No. 1, 2021, pp. 99-150; Fiddian-Qasmiyeh, E. et al., *Introduction: Refugee and Forced Migration Studies in Transition*, in: Fiddian-Qasmiyeh, E. et al. (eds.), *The Oxford Handbook of Refugee and Forced Migration Studies*, Oxford University Press, Oxford, 2014, pp. 1-20, p. 6.

⁵⁴ McLeman, *op cit.*, note 6, p. 17.

⁵⁵ See e.g.: Balesh, *op. cit.*, note 47, p. 80, McCormack, C. B., *America’s Next Refugee Crisis: Environmentally Displaced Persons*, Natural Resources & Environment, Vol. 32, No. 4, 2018, pp. 8-12; Lopez, *op. cit.*, note 2, pp. 365-410; Pelzer, M., *Environmentally Displaced Persons Not Protected - Further Agreement Required*, Environmental Policy and Law, Vol. 39, No. 2, 2009, pp. 90-91; Prieur, M., *Draft Convention on the International Status of Environmentally-Displaced Persons*, Urban Lawyer, Vol. 42, No. 1/4, pp. 247-258; Mileski, T.; Malish-Sazdovska, M., *Environmentally Displaced Persons*, Environmental Policy and Law, Vol. 48, No. 2, 2018, pp. 133-137; Moberg, K. K., *Extending Refugee Definitions to Cover Environmentally Displaced Persons Displaces Necessary Protection*, Iowa Law Review, Vol. 94, No. 3, 2009, pp. 1107-1136.

⁵⁶ Collyer, *op. cit.*, note 49, p. 5.

⁵⁷ Docherty, B.; Giannini, T., *Confronting a Rising Tide: a Proposal for a Convention on Climate Refugees*, Harvard Environmental Law Review, Vol. 33, 2009, pp. 350-403, p. 361.

⁵⁸ Hodgkinson, D. et al., *“The hour when the ship comes in”: A Convention for Persons Displaced by Climate Change*, Monash University Law Review, Vol. 36, No. 1, 2010, pp. 69-120.

⁵⁹ Moberg, *op. cit.*, note 55, p. 1114.

⁶⁰ McLeman, *op. cit.*, note 6, pp. 1-18.

⁶¹ Gemenne, F. et al., *How climate extremes are affecting the movement of populations in the Asia Pacific region*, in: Price, S.; Singer, J. (eds.), *Global Implications of Development, Disasters and Climate Change Responses to Displacement from Asia Pacific*, Routledge, New York, 2016, pp. 21-40, p. 30.

⁶² Brown, O., *Migration and Climate Change*, International Organisation for Migration, Geneva, 2008, p. 15.

⁶³ Ross, *op. cit.*, note 7, p. 5.

⁶⁴ Salaj, Z., *Međunarodno pravo i izazovi održivog razvoja: Klimatske promjene, države koje tonu i migracije*, Zagrebačka pravna revija, Vol. 6, No. 2, 2017, pp. 203-227; Wong, D., *Sovereignty Sunk - The Position of Sinking States at International Law*, Melbourne Journal of International Law, Vol. 14, No. 2, 2013, pp. 346-391.

⁶⁵ Sciaccaluga, G., *International Law and Protection of “Climate Refugees”*, Palgrave Macmillan, 2020, p. 139.

may or may not be peoples), and others focusing on the area affected by climate change and catastrophic natural disasters.

In some papers, several different terms are used in parallel. For example, McLeman uses the terms “people displaced by climate change”, “climate-change refugees” and “climate change-related migration”, referring to the same category of persons.⁶⁶ Balesh also uses the terms “climate refugees” and “environmentally displaced persons” as synonyms.⁶⁷ All this creates a confusing atmosphere and makes it difficult to recognise, and thus protect and meet the humanitarian needs of persons/groups of persons or peoples displaced by climate/environmental change, and exercise their (human) rights. According to Brown, these persons are almost invisible in the international system: no institution is responsible for collecting data on their numbers and providing them with basic services.⁶⁸ Getting the terminology right is especially important because “the choice of terminology is not a neutral one”.⁶⁹ The selected and generally accepted definition will have very real implications for the obligations of the international community under international law.⁷⁰ However, most papers still contain different terms, there is no agreement on the terminology and definition of the terms, and most disagree on the key elements in defining the term – persons/peoples, climate-related/environmental, a refugee/migrant/displaced person, suddenly/gradually, within the state/cross-border.

The term “environmental refugee” or “climatic refugee” was coined as early as 1970 by Lester Brown of the World Watch Institute.⁷¹ The first official use of the term climate refugee was in 1985 by El-Hinnawi, published in the United Nations Environment Programme (UNEP) report, which defined “environmental refugees” as “those people who have been forced to move or leave their traditional habitat, temporarily or permanently, because of a marked or conspicuous environmental disruption (natural and/or triggered by people) that jeopardised and imperilled their existence and/or seriously affected the quality of their life.”⁷² Myers broadly defined the term “environmental refugees” in 2002 as “people who can no longer get or gain a secure livelihood (or living) in their homelands because of soil erosion, drought, deforestation, desertification and other environmental problems, together with associated and incidental problems of population pressures

⁶⁶ McLeman, *op. cit.*, note 6, p. 1 and 12.

⁶⁷ Balesh, *op. cit.*, note 47, p. 80.

⁶⁸ Brown, *op. cit.*, note 62, p. 15.

⁶⁹ Francis, *op. cit.*, note 53, p. 107.

⁷⁰ Brown, *op. cit.*, note 62, p. 13.

⁷¹ Dutta, *op. cit.*, note 47, p. 185.

⁷² *Ibid.*

and profound poverty. In their desperation or despair, these people feel they have no alternative or option but to seek sanctuary elsewhere, however, hazardous the attempt. Not all of them have fled or left their countries, many being internally displaced. But all have abandoned their homelands on a semi-permanent if not permanent basis, with no or little hope of a foreseeable return.”⁷³

Some authors reject the terms “climate refugee”, “environmental refugee”, and similar terms because of their negative connotations describing them as “passive victims” and aiming at disempowering them.⁷⁴ As a result, they favour terms such as “low-lying peoples”, “low-lying islanders”, “disappearing states” or “sinking island states”. But, as noted by Ross, this kind of language is far from being unproblematic. The negative connotation of such terminology “may have political appeal, but may also create a sense of fatalism that limits international support” and also “risks exacerbating a sense of disempowerment already present in low-lying states from climate change itself.”⁷⁵

The elements of the terms most commonly used in this context will be critically analysed in the next section and some suggestions will be offered.

5. ANALYSIS OF THE ELEMENTS OF THE MOST COMMONLY USED TERMS

Given the complexity of the concept, the previously mentioned terms used in the literature and in practice suggest several key issues and distinctions that should be considered when choosing an appropriate term and defining it. We have identified the following key issues:

- A. Who are the victims – persons, groups of persons or peoples/population?
- B. Which phenomenological term should be used - climate/climate change-related or environmental?
- C. Which term related to leaving the territory (residence or home/centuries-old hearths) should be used – migration, relocation or displacement, and in relation to that, which terms should be used for persons in need of protection – (forced) migrants, refugees or displaced/relocated persons?

⁷³ *Ibid.*

⁷⁴ See Rayfuse, R., *International Law and Disappearing States - Maritime Zones and the Criteria for Statehood*, Environmental Policy and Law, Vol. 41, No. 6, 2011, pp. 281-287, p. 284; Ross, *op. cit.*, note 7, p. 22.

⁷⁵ Ross, *op. cit.*, note 7, p. 23.

- D. Should the term refer exclusively to cross-border migration/relocation/displacement or should it also include migration/relocation/displacement within one's own country?
- E. Can migrants/relocated/displaced persons return to the area they came from or has it been permanently destroyed - is it a forced or voluntary departure?
- F. Who has the obligation to help - the country of which they are citizens, the country to which they migrated/relocated/displaced, or international organisations?

In the context of the above key issues, in this paper we will focus on the most commonly used terms and analyse their meaning and suitability for this phenomenon. First of all, we will deal with the terms “climate/climate change related” and “environmental”. Second, we will analyse the suitability of the terms “migration”, “displacement” and “relocation”. Third, we will analyse the adequacy of the terms “refugees”, “migrants” and “displaced/relocated persons”. Finally, we will recapitulate and make a terminological proposal that seems most appropriate at the moment.

5.1. Climate change related or environmental?

The terms “climate refugee” and “environmental refugee” are often used interchangeably, although they sometimes refer to different concepts. Some authors, such as Compton, believe that the term “environmental refugee” is broader than the term “climate refugee”. She explains that the definition of the broader term “environmental refugees” comes from the United Nations Environment Programme and that the narrower term “climate refugees” has emerged more recently in an effort to define a particular subset of “environmental refugees” relocating specifically due to climate change.⁷⁶

Francis notes that demonstrating that climate change causes migration requires two causal links, i.e., a link between climate change and a particular environmental event, and a link between an environmental event and the decision to migrate.⁷⁷ However, the question arises as to what is meant by the terms “climate” and “environmental” and in which situations one can assume that relocation is precisely due to climate or environmental change. Is it climate change, environmental degradation or natural disasters, and does it make a difference whether

⁷⁶ Compton, *op. cit.*, note 50, pp. 363-364.

⁷⁷ Francis, *op. cit.*, note 53, p. 107.

such changes occur quickly and suddenly (floods, storms), or whether it is a slow, long-term process (e.g., desertification, droughts, coastal erosion)?

Climate is the regular pattern of weather conditions of a particular place. The environment is one's surroundings; it includes water, air, and land and their interrelationships, as well as the relationships between them and humans.⁷⁸ The latter relates to the impact of human activity on the environment in a particular time and space.⁷⁹ There are many reasons for the deterioration of the environment. Some are the result of natural causes (storms, tornados, volcanic eruptions, earthquakes), while others are caused by humans (environmental pollution, the construction of river dams, the logging of tropical forests, chemical warfare).⁸⁰ Human-caused climate change is a consequence of more than a century of net greenhouse gas emissions from energy use, land use and land use change, lifestyle and consumption patterns, and manufacturing.⁸¹ Some authors point out that the main difference between climate and environmental change is that climate change is caused by humans, whereas environmental change includes natural changes such as earthquakes.⁸² It is also said that climate change can also cause environmental change.⁸³ However, the question arises in which situations such changes lead to migration/displacement/relocation.

McLeman divides the factors or drivers of forced migration into two distinct groups: climate drivers, which can be climate processes (slow-onset changes such as sea-level rise, salinization of agricultural land, desertification, growing water scarcity and food insecurity) and climate events (sudden and dramatic hazards such as monsoon floods, glacial lake outburst floods, storms, hurricanes and typhoons), and non-climate drivers.⁸⁴ Non-climate drivers would refer to the vulnerability of certain areas to such external influences, i.e., the community's adaptive capacity. Namely, non-climate drivers will depend on whether a natural disaster in an area will trigger the need to leave that area, or whether the community has adaptive measures to prevent a natural disaster or mitigate its consequences. On the other hand, in the context of advocating for the term "environmentally displaced persons", Borges states that it would encompass "individuals of a country who for

⁷⁸ U.N. General Assembly (1972) "United Nations Conference on the Human Environment" (Stockholm 15 December) U.N. Doc. A/RES/2994 (1972), para. 1, citation according to Borges, *op. cit.*, note 5, p. 17.

⁷⁹ *Ibid.*

⁸⁰ Borges, *op. cit.*, note 5, pp. 19-20.

⁸¹ *The Synthesis Report - The Intergovernmental Panel on Climate Change*, *op. cit.*, note 9, p. 10.

⁸² Dutta, *op. cit.*, note 47, p. 189.

⁸³ *Ibid.*

⁸⁴ McLeman, *op. cit.*, note 6, pp. 6-7.

compelling reasons of sudden disasters (in particular cyclones, storms surges and floods) or progressive environmental degradation (in particular drought, desertification, deforestation, soil erosion, water shortages and other climate change related conditions), natural and/or human-made, impacting in their lives or livelihoods are obliged to leave their country of origin temporarily or permanently to a third state”.⁸⁵

Based on all the above, we tend to use the term “environmental” rather than “climate/climate-change related” because it is more inclusive and therefore can cover a broader range of reasons for leaving homes or countries. Indeed, we see no justification for excluding from appropriate legal protection persons who flee their places of residence due to, for example, a natural environmental disaster unrelated to climate change.

5.2. Migration, displacement or relocation?

When selecting and defining terms, it is important to determine which categories of people fall within the scope of the selected definition. With regard to the reasons and circumstances of leaving the territory, do we refer to “(forced) migration”, “displacement” or “relocation”? According to the International Organisation for Migration (IOM), “environmental migrants” are “persons or groups of persons who, predominantly for reasons of sudden or progressive change in the environment that adversely affects their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad”.⁸⁶ Similarly, the term climate-induced migration encompasses movement that is temporary or permanent, voluntary or forced, internal or cross-border; but it describes movement that occurs in response to climate-related events.⁸⁷ As stated by Ross, the word “migration” is an umbrella term that refers to movement away from one’s habitual residence. Migration can be internal, i.e., within a state, or cross-border, voluntary or involuntary, permanent or temporary, and the reasons for moving or a migrant’s legal status are irrelevant. In this broad sense, migration in response to climate change impacts is a recognised strategy for adapting to climate change impacts.⁸⁸ However, the term “migration” or “migrant” contains an element of volition. Some authors advocate the term “forced climate migration” or “forced

⁸⁵ Borges, *op. cit.*, note 5, p. 40.

⁸⁶ International Organisation for Migration, *Migration and the Environment*, discussion note, MC/INF/288, 1 November 2007, para. 6.

⁸⁷ Francis, *op. cit.*, note 53, p. 106.

⁸⁸ Ross, *op. cit.*, note 7, p. 3.

climate migrant”⁸⁹ to reflect its non-voluntary nature.⁹⁰ Ross also states that it is appropriate to view migration in these circumstances as a form of forced relocation, which, unlike voluntary migration, poses a number of human rights risks to those affected.⁹¹ The term “relocation” avoids confusion with the term “migration”, which connotes voluntary cross-border movement, since climate migration is a form of forced relocation.⁹² The term “relocation” means “the physical process of moving people, either temporarily or permanently, whether forced or with their consent, whereas “resettlement” in its fullest form means the replacement of assets lost and the improvement, or at least restoration, of living standards, together with development opportunity.”⁹³

The United Nations adopted another term, “environmentally displaced persons”, to describe people “who are displaced from or who feel obligated to leave their usual place of residence, because their lives, livelihoods and welfare have been placed at serious risk as a result of adverse environmental, ecological or climatic processes and events”.⁹⁴ It is important to stress that a “displaced person” is not the same as a “relocated person”. Smith gives an example of a village that “may be relocated to enable flooding for a hydroelectric project.”⁹⁵ Accordingly, relocation implies people leaving their homes in the context of regular circumstances in a functioning legal system. For all of the reasons mentioned above, we believe that the term “displaced person” is in this moment most appropriate in the context of people fleeing their homes for environmental reasons.

5.3. Refugees, migrants or displaced/relocated persons?

From the beginning, UNHCR has refused to use the term “environmental refugees” to avoid confusion with the existing legally recognised definition of “refugees”. The term used by UNHCR was “environmentally displaced persons”, while the International Organisation for Migration used the term “environmental migration”. The terms “migrants” and “refugees” are used interchangeably in the literature, although these two terms obviously have different meanings. Another

⁸⁹ Brown, *op. cit.*, note 62, p. 15.

⁹⁰ *Ibid.*

⁹¹ Ross, *op. cit.*, note 7, p. 3.

⁹² *Ibid.*, p. 23.

⁹³ Price, S., *Introduction*, in: Price, S.; Singer, J., *Global Implications of Development, Disasters and Climate Change Responses to Displacement from Asia Pacific*, Routledge, New York, 2016, pp. 1-18, p. 4.

⁹⁴ Compton, *op. cit.*, note 50, p. 365.

⁹⁵ Smith, R.K.M., *International Human Rights Law*, 10th edition, Oxford University Press, Oxford, 2022, p. 227.

er term used to refer to the people of concern is “internally displaced persons” (IDPs).⁹⁶ IDPs refer to people who are forced to flee but remain within the borders of their country. These are important differences because migrants, refugees and IDPs have different rights under international law. The UN should have a consensus on the discourse before making policy, otherwise the same policy could lead to different rights just because of terminology.⁹⁷

Some scholars have insisted on the use of the term “climate refugees”, implicitly arguing that the protective framework provided by international refugee law should also apply to those moving in the climate context.⁹⁸ Pursuant to the 1951 Convention Relating to the Status of Refugees (Art. 1, A)⁹⁹ and its 1967 Protocol (Art. I)¹⁰⁰, which are still the key legal instruments for defining refugees,¹⁰¹ a refugee is “any person who [...] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it”. According to this definition, the 1951 Convention, together with its Protocol, clearly aims to protect people fleeing their state for political reasons (political refugees).¹⁰² Thus, persons “fleeing from natural disasters [...] or economic crisis do not fall within the scope of the Refugee Convention”.¹⁰³

When addressing UNHCR with specific tasks, the General Assembly uses a somewhat broader definition of refugees based on a definition from the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa,¹⁰⁴

⁹⁶ Joseph; McBeth, *op. cit.*, note 49, p. 228.

⁹⁷ Dutta, *op. cit.*, note 47, pp. 189-190.

⁹⁸ Francis, *op. cit.*, note 53, p. 107.

⁹⁹ Convention relating to the Status of Refugees of 1951, *United Nations Treaty Series*, Vol. 189, p. 137.

¹⁰⁰ Protocol relating to the Status of Refugees of 1967, *United Nations Treaty Series*, Vol. 606, p. 267.

¹⁰¹ See Smith, *op. cit.*, note 95, pp. 222-223; Edwards, A., *International Refugee Law*, in: Moeckli, D.; Shah, S.; Sivakumaran, S. (eds.), *International Human Rights Law*, 3rd edition, Oxford University Press, Oxford, 2018, pp. 539-540; Bantekas, I.; Oette, L., *International Human Rights Law and Practice*, 2nd edition, Cambridge University Press, Cambridge, 2018, p. 824; Kugelmann, D., *Refugees*, Max Planck Encyclopedias of International Law, Oxford University Press, [https://opil.ouplaw.com/home/mpi], Accessed with subscription 24 April 2023, para. 2.

¹⁰² See Andrassy, J. *et al.*, *Međunarodno pravo*, 1. dio, 2. izdanje, Školska knjiga, Zagreb, 2010, p. 367.

¹⁰³ Kugelmann, *op. cit.*, note 101, para 4.

¹⁰⁴ *United Nations Treaty Series*, Vol. 1001, p. 45. See Andrassy *et al.*, *op. cit.*, note 102, p. 369; Lapaš, D., *Međunarodnopravna zaštita izbjeglica*, Hrvatski pravni centar, Zagreb, 2008, p. 5.

which is intended as a regional complement to the 1951 Refugee Convention.¹⁰⁵ Pursuant to Article 1 of this Convention, in addition to persons who fall into this category under the 1951 Refugee Convention definition, a refugee is also “every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality”. Similar reasoning regarding the expansion of the original refugee definition can be seen in the 1984 Cartagena Declaration on Refugees,¹⁰⁶ a non-binding American regional document. This declaration recommends that, in addition to persons covered by the core definition of the 1951 Refugee Convention, the concept of refugee should also include “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”. These expansions of the definition of refugee do not go much further than the original concept of protecting a person fleeing their state for political reasons.¹⁰⁷

Therefore, populations displaced by the impacts of climate change would not meet the definition of refugee for two key reasons. First, most displacement and migration would likely occur within national borders, and these people would automatically not qualify for refugee protection under the first criterion. Second, those who might be forced to move across international boundaries would also not qualify for protection, as persecution is purely a human act.¹⁰⁸ The United Nations Office of the High Commissioner for Refugees (UNHCR) has generally opposed the widespread use of the phrase “environmental refugee”, fearing that it would lead to a systematic misapplication of the word “refugee” to groups of people migrating within the borders of their own countries, seeking protection not from persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, but from climate change caused by homelessness as a result of natural disasters such as hurricanes and wildfires.¹⁰⁹

It is therefore quite clear that persons leaving their states for environmental/climate change related reasons are excluded from an even broader definition of ref-

¹⁰⁵ Smith, *op. cit.*, note 95, p. 225.

¹⁰⁶ Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, [<https://www.refworld.org/docid/3ae6b36ec.html>], Accessed 23 April 2023.

¹⁰⁷ See also Lapaš, D., *op. cit.*, note 104, p. 5.

¹⁰⁸ McLeman, *op. cit.*, note 6, pp. 1 and 14.

¹⁰⁹ McCormack, *op. cit.*, note 55, p. 9.

ugee. For this reason, it is proposed “to either come up with a new stand-alone international law instrument”, or to adopt “a protocol on climate refugees within the UNFCCC framework”.¹¹⁰ Since there are no incentives to expand the existing definition(s) and notion of refugee, and the relevant protection of international refugee law, terms such as “climate refugees” or “environmental refugees” that are widely used in the literature are fundamentally incorrect. Although most other authors also agree that people displaced by climate change do not belong to the category of refugees as defined by the 1951 Refugee Convention, the term climate refugee is still used in the literature today.¹¹¹

Unlike the term “refugee”, the term “migrant” is not, or at least has not yet been formally defined by international law,¹¹² and no specific rights derive from this general term, apart from the general rules of alien protection¹¹³ and international human rights law¹¹⁴. The only legally recognised category of migrants are “migrant workers”, although the specific term is not relevant to this particular discourse.¹¹⁵ According to the International Organisation for Migration, “migrant” is an “umbrella term, not defined under international law, reflecting the common lay understanding of a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons”.¹¹⁶ Unlike refugees, migrants “traverse international frontiers while lacking the element of persecution”.¹¹⁷

It has to be said that “climate change-related migration” and “climate migration” are preferred alternatives to the term “refugee”.¹¹⁸ This is because “migration” is an umbrella term that refers to any type of human mobility: internal or cross-bor-

¹¹⁰ Vershuuren, J., *Legal Aspects of Climate Change Adaptation*, in: Hollo, E. J.; Kulovesi, K.; Mehling, M. (eds.), *Climate Change and the Law*, Springer, 2012, p. 261. See also Docherty; Giannini, *op. cit.*, note 57, p. 349 and further; Gogarty, B., *Climate-change Displacement: Current Legal Solutions to Future Global Problems*, *Journal of Law, Information and Science*, Vol. 21, No. 1, 2011, pp. 167-188, p. 1 and further.

¹¹¹ See *supra* chapter 4.

¹¹² Kugelmann, *op. cit.*, note 101, para. 3.

¹¹³ See *ibid.*, paras. 21-22.

¹¹⁴ See *ibid.*, para. 23.

¹¹⁵ The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families defines “migrant worker” as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national” (Art. 2(1)). *United Nations Treaty Series*, Vol. 2220, p. 3.

¹¹⁶ *International Migration Law: Glossary on Migration*, International Organisation for Migration, Geneva, 2019, [https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf], Accessed 25 May 2023, p. 132.

¹¹⁷ Bantekas; Oette, *op. cit.*, note 101, p. 822.

¹¹⁸ Ross, *op. cit.*, note 7, p. 22.

der movement; temporary, circular or permanent movement; voluntary or involuntary relocation; regarding individuals or communities; and irrespective of the drivers of movement.¹¹⁹ Thus, the term “climate migration” clarifies the driver but remains intentionally open in all other respects.¹²⁰ We must note, however, that while the use of the term “migrants” in the context of the persons fleeing their states for environmentally related reasons is not incorrect *per se*, as is the case with the term “refugees”, it is too broad. It includes equally reasons of persecution and various natural or man-made threats, economic necessities, but also purely voluntary and unforced reasons.

As noted above, since 1977, the General Assembly has used the term “internally displaced persons” (IDPs) in addition to the term “refugee”.¹²¹ This was intended to entrust UNHCR with the care of persons excluded from the definition of refugees only because they have fled their homes to another part of their state, but not abroad.¹²² This is because the number of “internally displaced persons” significantly exceeds the number of refugees in the world.¹²³ Although UNHCR rejects the use of the term climate refugee for people who are in fact IDPs, it does acknowledge the underlying problems faced by IDPs and has pointed to the ongoing need for further study of this phenomenon. UNHCR has even called for the development of an independent UN legal framework that deals exclusively with IDPs displaced by climate-related events, such as increasing natural disasters and the scarcity of critical natural resources.¹²⁴

According to the 1998 non-binding UN Guiding Principles on Internal Displacement,¹²⁵ “internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border” (Introduction, para. 2). There is also a regional (binding) treaty on the protection of internally displaced persons – the 2009 Kampala Convention, the African Union Convention for the Protection and Assistance of Internally Dis-

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

¹²¹ Andrassy *et al.*, *op. cit.*, note 102, p. 369.

¹²² *Ibid.*, p. 369; Smith, *op. cit.*, note 95, p. 227; Kugelmann, *op. cit.*, note 101, para. 15.

¹²³ See *Global trends*, official web pages of the OHCHR, [<https://www.unhcr.org/global-trends>], Accessed 24 April 2023.

¹²⁴ McCormack, *op. cit.*, note 55, p. 9.

¹²⁵ UN Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2.

placed Persons in Africa.¹²⁶ This convention defines internally displaced persons in the same way as the 1998 UN Guiding Principles (Art. 1, k.). Thus, international law refers to those who are forced to move as “displaced persons” or “refugees”, and guarantees them more legal protection than those who move voluntarily, or “migrants”.¹²⁷

The most important feature of the definition of an “internally displaced person” as compared to the definition(s) of a “refugee”, apart from its internal character, is the notion of natural or man-made disasters. As Bantekas and Oette note, where “flight is the result of a man-made or a natural disaster and the person is not fleeing abroad for fear of persecution he or she is characterised as an internally displaced person”. The same authors note that, on the other hand, “the status of a person fleeing abroad from the effects of any of the aforementioned disasters is unclear and indeterminate”.¹²⁸ Thus, it is only a small step to delete the word “internally” to obtain the term relevant to cross-border cases of persons fleeing their homes for environmentally related reasons. Unlike the term “migrant”, the term “displaced person” (without the adverb “internally”) is more specific and refers to persons leaving their states for environmental/climate change related reasons. Prieur, in our view, therefore rightly argues for the use of the term “environmentally displaced persons”, noting that they are not refugees, even if they cross a border, but ordinary citizens displaced within their own country or in another.¹²⁹ In both cases, their vulnerability stems from the fact that the disaster exposes them in particular to the risk that their essential rights will not be recognised because there is currently no legal basis for that.¹³⁰ Borges also advocates the term “environmentally displaced persons”, which is most appropriate when “discussing issues of legal protection and obligations of states under international human rights law for people forced to move due to environmentally triggered conditions”.¹³¹ Based on the above, and not least because UNHCR also prefers this term, it seems to us that the term “environmentally displaced persons” is most adequate at this moment. However, it should be borne in mind that the term “environmentally displaced persons”, although it may sound official in the context of its use by UNHCR, does not imply any legal rights in the realm of international refugee law.¹³²

¹²⁶ Available at the official web pages of the African Union [<https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa>], Accessed 24 April 2023.

¹²⁷ Francis, *op. cit.*, note 53, p. 107.

¹²⁸ Bantekas; Oette, *op. cit.*, note 101, p. 823.

¹²⁹ Prieur, *op. cit.*, note 55, p. 253.

¹³⁰ *Ibid.*

¹³¹ Borges, *op. cit.*, note 5, p. 40.

¹³² Compton, *op. cit.*, note 50, p. 365.

5.4. Recapitulation and suggestions

Back in 2011, the Nansen Conference noted that there was no standard terminology and stressed that misleading and inaccurate terms such as “climate refugee” or “environmental refugee” should be avoided.¹³³ However, the conference recognised the need to clarify terminology.¹³⁴ This terminology has been challenged by, *inter alia*, UNHCR, which has expressed serious reservations, arguing that it has no basis in international refugee law and could potentially undermine that legal regime.¹³⁵ Even more problematic is a more recent term “environmental migrant”, which refers to “persons or groups of persons who, predominantly for reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their homes or choose to do so, either temporarily or permanently, and who move either within their country or abroad”, as offered by the International Organisation of Migration (IOM).¹³⁶ This term risks undermining the existing protection mechanisms, particularly for internally displaced persons, because it does not distinguish between internal and cross-border movements of persons. It also blurs the distinction between forced and voluntary movements, which is important from a legal protection perspective.¹³⁷ As Borges notes, there is “a general and legal scholarly argument that international law is currently ill-equipped to provide protection to displaced people stemming from environmental factors”.¹³⁸

Some authors, such as Balesh, who are in favour of the use of the term “climate refugee” and the adoption of a new comprehensive treaty on climate change refugees, state that it has been advocated that the definition of climate refugee should include forced migration, temporary or permanent relocation, movement across borders, disruption consistent with climate change, sudden or gradual environmental disruption, and a more than likely standard for human contribution to the disruption.¹³⁹ Although we do not consider the term “climate refugee” appropriate, parts of the definition proposed by Balesh should definitely be discussed.

¹³³ Kälín; Schrepfer, *op. cit.*, note 1, p. 28.

¹³⁴ *Ibidem*.

¹³⁵ UNHCR, Climate change, natural disasters and human displacement: A UNHCR perspective, 23 October 2009, p. 3.

¹³⁶ IOM, Discussion Note: ‘Migration and the Environment’, 94th Session of the IOM Council, Doc. No. MC/INF/288, 2007, para. 6. Citation according to Kälín; Schrepfer, *op. cit.*, note 1, p. 28.

¹³⁷ *Ibid.*

¹³⁸ Borges, *op. cit.*, note 5, p. 16.

¹³⁹ Balesh, *op. cit.*, note 47, pp. 11-102.

Based on the concept proposed by the IOM, Renaud proposes three subcategories. The term “environmental emergency migrant” refers to persons displaced by an environmental event if they remain within state borders, as well as persons displaced across borders. An “environmentally forced migrant” is a person who has to leave his or her home “in order to avoid the worst of environmental deterioration” or a person with no option to return to his or her former home. The urge to leave is weaker in this category than in the first category, but still exists to an extent that justifies qualifying such movement as forced. This category also seems to cover at least certain persons migrating as a form of adaptation. The third category consists of “environmentally motivated migrants”, who still have the option of leaving their home in the context of deteriorating environments, or who were initially qualified as environmental emergency migrants but have a real return option.¹⁴⁰ These subcategories may be helpful, but we are not inclined to accept the term “migrant” in this context for the reasons stated above.

It is quite clear that the term “refugee”, despite its catchiness and its suitability for public mobilisation, is unsuitable, and it is necessary to advocate strongly for its banishment from the theoretical and practical discourse. The term “migrant”, although not inaccurate in itself, is too broad and, legally speaking, does not do much for environmental migrants. We believe that the term “displaced person” is most appropriate and adequate in this context. As already explained, we believe that the term “environmental” is better than the term “climate/climate-related”, and therefore we advocate the use of the term “environmentally displaced persons”.

6. CONCLUSION

To date, there has been limited national and international response to the challenge of persons/people fleeing their homes for environmental reasons, and their legal protection remains inadequate. The collapse of the Earth’s biosystem and the degradation of the environment are not sufficiently prevented, nor are harmful climate changes sufficiently reduced. There is a lack of responsibility for either the states or the involved corporations. No effective compensation system for the most affected victims of climate change has been established. Despite the fact that different areas of international law, such as international environmental law, international refugee law or international human rights law, touch upon this subject, none of them in their current form and practice provides (adequate and/or sufficient) legal solutions to this problem.

¹⁴⁰ Renaud, F. G. *et al.*, J., *A Decision Framework for Environmentally Induced Migration*, International Migration, Vol. 49, 2011, pp. 14-15, citation according to Kälin; Schrepfer, *op. cit.*, note 1, p. 29.

The gap in legal protection is already evident from the fact that there is no clearly accepted term or definition for this category of persons or people. There is no lack of proposals for various terms and definitions. However, a good part of these terms, especially the most commonly used ones (“climate refugees” or “climate migrants”), are imprecise and misleading (e.g. “climate migrants”), i.e., they are not in line with positive international law and official (international) legal terminology (e.g. “climate refugees”). The international community still does not recognise the importance of relevant legal regulation. Apart from detecting the problem (dramatic climate changes causing migration) and identifying vulnerable groups of people (nations or citizens of certain areas), it is still doing too little to stop the course of our civilisation toward even more brutal pollution of the earth, to punish those responsible and to ensure compensation for those whose rights to survival are threatened. If the country whose citizens are threatened by climate change cannot provide adequate legal and other protection, international governmental and non-governmental organisations must provide targeted assistance to these peoples and groups of people.

Without uniform terms, their clear definitions and regulated rights, hundreds of millions of people threatened by climate change are unlikely to achieve their legal protection. The ideal solution would be the adoption of a specialised international treaty with the appropriate universally accepted terminology and definition and specific legal norms tailored to these persons. However, since there is probably no time to adopt a new specialised international treaty, there is an urgent need to adopt and organise the existing legal norms and mechanisms within the existing network of international law, primarily in the field of general protection of human rights. As it is shown, international refugee law is not applicable to environmentally displaced persons because of its strict definition of refugee. There are currently no incentives to change its long established concept of a political refugee and it is not realistic to expect this would happen anytime soon, if ever. On the other hand, international environmental law is currently concentrated mainly on the mitigating and adapting to climate change and not on providing protection to the persons or people affected by climate change. International human rights law, with its well-established mechanisms available to victims of human rights violations (e.g. the individual right to complaint to Human Rights Committee or European Court of Human Rights), is currently the most potent field of international law to provide protection to environmentally displaced persons. The acceptance of appropriate terminology and definition of the persons concerned is a necessary basis for the recognition of their specific situation and needs in the application of existing international treaties on the protection of human rights.

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