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Course of International Organizations and Human Rights

**The Role of International Organizations in the Protection
of the Rights of Climate and Environmental Migrants**

Prof. Donato Greco

SUPERVISOR

Prof. Giordano Alfonso

CO-SUPERVISOR

Chiara Tricca - 657762

CANDIDATE

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ABSTRACT

Migration has long served as a strategy of human adaptation to environmental and social disruption, yet climate change is intensifying its scale, frequency, and complexity. This thesis investigates climate- and environment-related displacement and argues that people compelled to move due to environmental harm remain largely invisible in law, lacking formal recognition and coherent protection. Through an evaluation of the relevance and limits of existing legal regimes, this work explores how each framework addresses, directly or indirectly, climate-related mobility. Cases such as *Teitiota v. New Zealand*, *Daniel Billy et al. v. Australia* and *Sacchi et al. v. Argentina* have progressively linked environmental degradation to the protection of fundamental rights, including the rights to life, family life, culture, and health. At the same time, regional systems and national jurisprudence have further contributed to the development of emerging standards. This work concludes that, although no comprehensive legal status currently exists for climate-displaced persons, potential avenues for protection may be derived from the interpretation and coordinated application of existing legal frameworks.

INTRODUCTION

Throughout history, migration has been fundamental to human survival, enabling communities to adapt to environmental and social disruptions. However, in recent years this phenomenon has intensified due to climate change and rising global temperatures, that are impacting the scale, frequency, and disruptiveness of natural disasters¹. In this context, climate-induced migration has become an essential way for people seeking to

¹ Anderson B. and Blinder S., *Who Counts as a Migrant? Definitions and their Consequences*, in The Migration Observatory at the University of Oxford, 2024.

escape the effects of environmental degradation and the socio-economic vulnerabilities it creates.²

Building on this connection, this thesis examines the link between migration and climate change, focusing in particular on how people displaced by environmental factors often lack formal recognition and protection. In fact, climate and environmental migrants represent one of the least protected groups, whose rights and needs remain inadequately addressed by international legal frameworks.

Climate change can be described as one of the most urgent global challenges of our time, with significant implications not only for the environment, but also for economies and human societies around the world. Nowadays, it is not often perceived as a pressing issue, but rather as a future threat, unlikely to affect current generations. The reality, however, is quite different. In fact, the effects of climate change are already manifesting worldwide, with temperatures that continue to rise, affecting the rise of sea levels, the intensity and frequency of extreme weather events such as droughts, floods, and cyclones as well as the gradual degradation of ecosystems through phenomena like desertification and soil salinization.³ This is especially concerning as it also inevitably affects critical sectors, such as agriculture, water resources, energy systems, and public infrastructures, consequently threatening food security, human health, economic stability, and, in many cases, the very habitability of entire regions.⁴

As of today, the forced displacement of populations, both within and across borders, is one of its most visible and immediate consequences. According to the Intergovernmental Panel on Climate Change (IPCC), between 3.3 and 3.6 billion people live in areas highly exposed to climate-related risks. Indigenous peoples, smallholder farmers, and coastal communities have been identified as the ones most at risk.⁵ Additionally, it has been estimated that over 376 million people have been forcibly displaced by floods, storms, droughts, and earthquakes since 2008, with a record of 32.6

² Ivi, p.1.

³ Eveno V. B. and Teles P.G., *Élévation du niveau de la mer et droit international: De l'adaptation à l'action*, Editions Pedone, 2022.

⁴ Ibidem.

⁵ Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2022: Impacts, Adaptation, and Vulnerability*, Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge University Press, 2022.

million displaced in 2022 alone.⁶ Looking ahead, projections indicate that the situation will likely worsen. The Institute for Economics and Peace has foreseen that, if current trends persist, up to 1.2 billion people could be displaced by 2050 due to ecological threats.⁷ Supporting this view, data show that in recent years natural disasters have led to more displacement worldwide than armed conflict.⁸

Migration driven by environmental factors can take different forms, mostly depending on the type of natural events communities are exposed to. Sudden-onset disasters often result in people moving temporarily and within short distances, with the intention of returning to their homes once conditions allow. In this sense, even if their immediate effects can be severe, they generally have a limited impact on people's lives in the long-term.⁹ On the other hand, slow-onset disasters usually result in progressive and sometimes even permanent migratory movements, depending on the institutional capacity of the receiving country as well as the availability of resources at both the State and the individual level. For instance, the rise of sea levels has increased the destructiveness of tropical storms and floods, while long dry seasons have intensified the severity of droughts.¹⁰ A concrete example are the significant migration movements from Honduras and Guatemala toward the United States, linked to the rising temperatures in these countries; as well as the 2022 floods in Pakistan, which occurred amid a severe economic and political crisis, leading to the displacement of 8 million people with subsequent international migration flows.¹¹

Climate change inevitably involves the entire international community, as all states contribute to it to varying degrees and share the responsibility to ensure that international human rights standards are upheld. Nonetheless, there are some regions that are significantly more affected and exposed to its impacts than others. Sub-Saharan Africa, South and Southeast Asia, Central and South America, and small island developing states, are among the most vulnerable, given the strong reliance of their populations on

⁶ Apap, J., *The concept of 'climate refugee': Towards a possible definition*. European Parliamentary, Research Service, 2023.

⁷ Institute for Economics and Peace, *Ecological Threat Register*, 2020.

⁸ Ibidem.

⁹ European Migration Network, *Displacement and migration related to disasters, climate change and environmental degradation*, EMN Inform, 2023.

¹⁰ Ibidem.

¹¹ Ibidem.

subsistence agriculture and informal economies.¹² More specifically, small islands in the Pacific, such as Kiribati, Tuvalu, and the Marshall Island, are severely exposed to the rise of sea level and risk becoming uninhabitable long before being submerged. The most concerning consequences include the salinization of freshwater, degradation of agricultural land and more frequent extreme weather events. These elements directly threaten the basic conditions for human life on those territories, causing mass displacement that often results in a demographic collapse, a weakening of State authority and inter-state tensions over resources.¹³

The IPCC has estimated that, since the beginning of the 20th century, global sea levels have risen by approximately 20 centimeters, with a current average annual rise of 3.3 mm, a rate ten times higher than historical averages over the last millennium.¹⁴ Even with the implementation of effective climate mitigation policies, projections have foreseen that sea levels could rise by one meter by 2100 and potentially by two meters by 2300.¹⁵ Additionally, the 2020 reports from the Human Rights Measurement Initiative, found the effects of sea level rise have significantly impacted the enjoyment of fundamental rights across the Pacific.¹⁶ For instance, the Federated States of Micronesia have officially categorized the limited access to adequate food and clean water due to sea level rise as a national problem. In Fiji, the degradation of arable land and disruption of agricultural cycles are undermining food security and crop resilience. In Samoa and Kiribati, increasingly frequent urban flooding and freshwater salinization have hindered the access to education and forced communities living along eroded coastlines to relocate, leading to social exclusion and marginalization.¹⁷ These examples clearly show the inextricable link between environmental degradation and the enjoyment of fundamental human rights. In fact, when the environment is damaged, it becomes harder to secure essential resources, such as food, clean water, safe housing, education, and healthcare. At

¹² Eveno V. B. and Teles P.G., *Élévation du niveau de la mer et droit international*, cit., p.2.

¹³ Ibidem.

¹⁴ Lindsey R., *Climate Change: Global Sea levels*, NOAA Climate.Gov, US Department of Commerce, 2025.

¹⁵ Ibidem.

¹⁶ Human Rights Measurement Initiative, *HRMI 2020 Annual Survey and People Data Report*, 2021.

¹⁷ Eveno V. B. and Teles P.G., *Élévation du niveau de la mer et droit international*, cit., p.2.

the same time, also fundamental collective rights are threatened, including the right to culture, development, and self-determination.¹⁸

Importantly, human mobility should not be viewed exclusively as a negative consequence of climate change. Migration can also function as an adaptation strategy, enabling individuals and communities to cope with environmental stress. In some cases, it does not represent an act of desperation, but rather a proactive measure to build resilience. People who leave climate-vulnerable regions and secure better livelihoods elsewhere often support those who remain behind through remittances, knowledge transfer, and transnational networks. Many climate-exposed countries are highly remittance-dependent, such as Tonga, where remittances have made up over 40% of GDP since 2020.¹⁹

Nonetheless, whether these movements are driven by positive opportunities or by adverse conditions, it is clear that climate- and environment- related mobility is growing rapidly, and the experiences of those affected have become increasingly visible. Yet, this group remains unrecognized within both international and domestic legal systems. A key factor contributing to this invisibility is the lack of a universally accepted legal definition of who is a climate or environmental migrant. The concept was first introduced in the 1970s by Lester Brown of the Worldwatch Institute, who adopted a neo-Malthusian approach in his analysis of the phenomenon, emphasizing its concerns about overpopulation and resource scarcity.²⁰

A turning point came with the 1985 United Nations Environment Program (UNEP) report by Essam El-Hinnawi, in which “environmental refugees” were, for the first time, formally defined as individuals “forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life”.²¹ With this definition El-Hinnawi successfully managed to take into account both the heterogeneity of environmental displacement and the multiplicity of its drivers.²²

¹⁸ Ivi, p.4.

¹⁹ Wignaraja K., *The power of remittances*, United Nations Development Program, 2025.

²⁰ Morrissey J., *Environmental change and forced migration: A state of the art review*, Refugee Studies Centre Background Paper, 2009.

²¹ Hinnawi E. E., *Environmental Refugees*, UNEP, 1985.

²² Morrissey J., *Environmental change and forced migration*, cit., p.5.

Throughout the years various organizations have also tried proposing alternative terminology and definitions. The International Organization for Migration (IOM) defines environmental migrants as “persons or groups of persons who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad”.²³ Similarly, the European Migration Network distinguishes between environmental migrants and environmentally displaced persons, based on the definition of disaster established by the Nansen Initiative, which understands it as “a serious disruption of the functioning of a community or society causing widespread human, material, economic or environmental losses which exceed the ability of the affected community or society to cope using its own resources”.²⁴

Today, developing a coherent and unified definition that effectively portrays the complexity and multifaceted nature of the phenomenon remains a significant challenge, as it might result in oversimplification or reductionism. Climate change often leads to displacement if paired with other drivers such as state inaction, institutional weakness, pre-existing inequalities, conflict or poverty, meaning that the individuals forced to move are affected by environmental degradation, but not exclusively or primarily. For this reason, a universally agreed definition that fully captures these ethical and political dimensions is still missing.²⁵ This gap is particularly significant given the numerous implications that it has on how displaced populations are identified, how their numbers are estimated, and how national governments and international organizations respond to their needs. It inevitably influences policy-making processes, especially the collection of standardized and comparable data necessary for effective, evidence-based decisions, as well as political discourse, sometimes contributing to confusion or resistance within societies.²⁶ Additionally, the numerous overlapping terms that have been used in recent

²³ Council of the International Organization for Migration (IOM), *Discussion Note: Migration and the Environment*, MC/INF/288, 2007.

²⁴ The Nansen Initiative, *Agenda for the protection of cross-border displaced persons in the context of disasters and climate change*, Volume I, 2015.

²⁵ Haddad E., *Who is (not) a Refugee?*, EUI Working Paper SPS No. 2004/6, European University Institute, Department of Political and Social Sciences, 2004.

²⁶ Anderson B. and Blinder S., *Who Counts as a Migrant? Definitions and their Consequences*, cit., p.1.

years, such as “climate refugees,” “environmental migrants,” and “disaster-displaced persons,” have contributed to policy uncertainty and weakened legal accountability. The use of the word “refugee” in particular is legally inaccurate, as environmental factors do not currently constitute grounds for protection under art. 1A of the Refugee Convention.²⁷ More generally, climate migrants are not recognized under any international legal regime. As a result, many individuals and communities find themselves in a legal limbo, where they are forced to migrate due to circumstances that are beyond their control, while they remain without any form of international protection, including the possibility of requesting asylum or resettlement.²⁸ In this regard, some countries and regions have begun to develop policy frameworks to address the phenomenon. However, without a coherent approach at the international level, solutions will remain fragmented, non-binding and insufficient to cover all the different types of displacement.²⁹

The main objective of this thesis is to examine the extent to which international organizations contribute to the development of legal and institutional frameworks that effectively protect the rights of individuals displaced by environmental and climate-related causes. It first tries to conceptualize the phenomenon by addressing the definitional challenges, as well as the difficulties encountered by policymakers when attempting to contextualize and target the issue in decision-making processes. The analysis will then explore the relevant international legal frameworks, particularly the 1951 Refugee Convention, and assess how, and to what extent, they offer protection to climate and environmental migrants. Special attention will be given to universal and regional human rights instruments, as well as to international environmental law, analyzing how they offer different opportunities for protection whether as alternative or complementary avenues.

Subsequently, the second chapter will shift the focus to international organizations, particularly United Nations agencies, treaty monitoring bodies, and international courts. It will explore the role they play in expanding the legal space for the recognition of climate-displaced persons, both through soft law development and case-specific interventions. The analysis will consider the cases of *Daniel Billy and others v. Australia*

²⁷ European Migration Network, *Definition of Environmental Migrant*.

²⁸ Gonin P. and Lassailly-Jacob V., *Les réfugiés de l’environnement. Une nouvelle catégorie de migrants forcés?*, *Revue Européenne des migrations Internationales*, 18(2), 139-160, 2002.

²⁹ Ibidem.

(Torres Strait Islanders Petition), *Ioane Teitiota v. New Zealand*, *Sacchi et al. v Argentina et al.*, comparing the contributions each case has made to the development of a protection framework. Then, attention will turn to the International Court of Justice and its leading role in clarifying States' obligations in the context of the current climate emergency, as well as the legal consequences deriving from breaching those obligations.

Finally, the last chapter will broaden the analysis to the regional and national levels. At the regional level, it will examine the approaches developed within the Inter-American and European systems, while at the national level the chapter will focus on case law from France and Italy. These countries have been selected for their relevance to recent legal and policy development as well as for their groundbreaking approach to the issue. In the Italian case study, particular attention will be given to the fluctuating progress made in recent years, influenced significantly by changing political orientations and governmental priorities. These shifts demonstrate how the recognition of climate-related displacement remains especially vulnerable to political dynamics.

This thesis adopts an interdisciplinary approach, grounded primarily in the analysis of international and domestic legal sources, including treaties, conventions, general comments, decisions by international courts and quasi-judicial bodies, national jurisprudence, and relevant policy documents. This legal analysis is complemented by a review of institutional practice and academic literature in the fields of international migration law, human rights law, environmental law, and global governance.

Climate change is an urgent crisis, and so is the need for innovative legal and policy solutions capable of addressing current protection gaps, while safeguarding the dignity and the rights of communities forced to move because of its impacts. Without legal recognition and coordinated international action, millions of people risk continuing falling through the cracks of existing protection regimes, persistently remaining invisible in law and policy.

CHAPTER I

Climate and Environmental Migration in International Law

SUMMARY: 1. The Limitations of the 1951 Refugee Convention in Addressing Climate and Environmental Migration. – 2. Human Rights Protection at the Universal and Regional Level. – 3. Environmental Migration under International Environmental Law.

1. The Limitations of the Refugee Convention in Addressing Climate and Environmental Migration

The international refugee regime constitutes the main legal framework for the protection of asylum seekers and refugees globally. It is primarily based on the 1951 Refugee Convention and its 1967 Protocol, together with the United Nations High Commissioner for Refugees (UNHCR) as the principal agency.³⁰ This regime determines the rights, obligations, and competences of States with regard to those who seek refuge from persecution, while fostering international cooperation to manage responsibility and burden-sharing among States. Central to this framework is the definition of a refugee, which specifically concerns individuals who are fleeing persecution on five distinct grounds: race, religion, nationality, membership of a particular social group, or political opinion.³¹ As of today, environmental factors such as climate change, natural disasters, or ecological degradation are not included in this definition. This omission raises significant challenges about the relevance and suitability of the Refugee Convention in protecting persons displaced by environmental and climate-related reasons.³²

The term “environmental refugee” was first proposed by El-Hinnawi in a 1985 United Nations Environment Program (UNEP) report that focused on the consequences of environmental disruption on forced migration patterns.³³ El-Hinnawi’s work was groundbreaking in raising the attention of the international community on the impact of the ongoing environmental degradation, resulting from lack of control and increasing

³⁰ Noorda A.Y., *Climate Change, Disasters and People on the Move: Providing Protection under International Law*, First edition, Koninklijke Brill nv, 2022.

³¹ Ibidem.

³² Ibidem.

³³ Hinnawi E. E., *Environmental Refugees*, UNEP, 1985.

development pressures, which can force large populations to flee their homes involuntarily. He defined “environmental refugees” as people who “are forced to leave their traditional habitats, either temporarily or permanently, because of significant physical, chemical, or biological changes in their ecosystems, which render the environment unable to support human life”.³⁴ The environmental changes he referred to are broad and could be natural, such as floods or earthquakes, or induced by human activity, such as pollution or deforestation.

El-Hinnawi classified environmental refugees into three categories. First, those who are temporarily displaced by sudden environmental events, like natural disasters, and who are expected to return when conditions improve. Second, those permanently displaced due to irreversible environmental changes, often resulting from human interventions such as dam construction or industrial projects that alter or destroy their places of origin. Third, those who move within their own countries or across borders due to gradual environmental degradation, such as desertification, soil erosion, or resource depletion, which have an impact on their means of subsistence.³⁵ This classification highlights that environmental displacement varies in terms of temporality, cause, or scale and it helps to capture the diverse and complex ways in which environmental factors can cause forced migration. Moreover, each of the abovementioned categories creates multiple environmental, socio-economic and cultural problems, which not only affect the natural environmental conditions of the areas where the refugees migrate, but also the quality of life of the refugees themselves and of the local citizens of the areas where they arrive.

A common example is the agricultural sector, as it is the most affected by climate change. In fact, farmers are increasingly experiencing reduced land productivity and livelihoods due to prolonged droughts or environmental degradation, such as waterlogging and soil salinization. When such crises occur, farmers tend to migrate temporarily to urban areas, with the aim of returning to their lands once conditions improve. However, if the environmental decline persists over several years, they may start searching for alternative livelihoods or permanent relocation, doubting the long-term viability of their original habitats.³⁶ These migrations, whether internal or cross-border, not only represent a challenge for the displaced individuals, but they also intensify the

³⁴ Ivi, p.9.

³⁵ Ibidem.

³⁶ Noorda A.Y., *Climate Change, Disasters and People on the Move*, cit., p.9.

pressure on the receiving areas in terms of housing, services, social cohesion, and local ecosystems. Despite these cross-sectoral impacts, the Refugee Convention does not offer any specific protection or assistance to address them.³⁷

Another example of this phenomenon can be found in the case concerning the Carteret Islanders of Papua New Guinea. Due to rising sea levels threatening their very existence, these islanders were relocated within their national territory. Their struggle was greatly publicized in the media, and they came to be known as the “world’s first environmental refugees”.³⁸ This case shows the vulnerability of small island developing states, which face existential threats from climate change and are pushing the international community to reconsider traditional notions of displacement and protection. In response, in 2006, the government of the Maldives, which is also threatened by sea-level rise, organized an international conference dedicated to addressing the protection and resettlement needs of so-called “climate refugees,” advocating amendments to the Refugee Convention to explicitly include those displaced by environmental factors. Similarly, the Bangladeshi finance minister publicly called for a revision of the Refugee Convention to cover the difficulties encountered by “climate refugees”, arguing that the Convention had already been adapted in the past and could be amended again to reflect new realities.³⁹

Despite these efforts, the notion of environmental or climate refugees continues to encounter resistance and remains controversial within international legal and political circles. In particular, three main lines of objection have been brought forward against the extension of refugee status when it comes to environmental causes.⁴⁰

The first is based on a strict textual interpretation of the Refugee Convention. Legal scholars and policymakers emphasize that the definition of refugee provided by the Convention explicitly limits refugee status to only five grounds, none of which mention environmental threats. These factors do not target individuals or groups based on race, religion, nationality, social group, or political opinion, a condition that must be met in order to fall under the Convention’s framework. Indeed, the refugee definition

³⁷ Ivi, p.10.

³⁸ Erickson K.A., *Filling the Protection Gaps for Climate Change and Disaster-Induced Migrants*, Human Rights Brief, Vol. 25, Iss. 2, Article 13, 2022.

³⁹ Noorda A.Y., *Climate Change, Disasters and People on the Move*, cit., p.9.

⁴⁰ Ibidem.

specifically focuses on persecution at a personal level, related to political or social identities, and distinguishes such situations from displacement caused by natural or environmental forces that have an indiscriminate impact on populations. From this perspective, a new or amended legal instrument would be necessary to effectively address environmental displacement, considered that it does not fall within the scope of the refugee regime.⁴¹

The second major criticism concerns the nature of the displacement caused by climate change and environmental deterioration, which is both complex and multi-causal. In fact, displacement is typically caused by an interplay of environmental, economic, social, and political drivers, and it can rarely be connected to one factor exclusively. For instance, when a family leaves their village because drought destroyed their agricultural livelihood, it is not only the environmental disaster that plays a pivotal role in their decision to move, but also economic distress, lack of government support, or local conflict. This plurality of causes and drivers complicates domestic asylum procedures, as it makes it difficult to prove that environmental factors alone are the cause of forced movement. Therefore, invoking refugee protection based on environmental grounds becomes nearly impossible.⁴²

The third line of objection raises ethical and political questions about expanding refugee protection to include environmental migrants. Critics have questioned the moral basis for prioritizing environmental refugees over other groups fleeing severe hardships, such as those displaced by poverty, famine, or pandemics (e.g., COVID-19). They have highlighted that even the UNHCR, the UN agency responsible for the protection of refugees worldwide, has shown hesitation regarding extending its mandate to cover environmental displacement, due to the limited resources and the institutional capacity constraints within the organization itself. At the political level, States have not shown much interest in broadening the definition of a refugee, as this would mean assuming greater responsibilities for hosting and resettling displaced individuals.⁴³ These concerns contribute to a lack of consensus and create inertia when it comes to developing new international legal protections for environmental migrants.

⁴¹ Erickson K.A., *Filling the Protection Gaps*, cit., p.11.

⁴² Ibidem.

⁴³ Cournil C. and Mazzega P., *Réflexion prospective sur une protection juridique des réfugiés écologiques*, *Revue Européenne des migrations internationales*, 23(1), 7-34, 2007.

Expanding the definitions contained in the 1951 Convention and its 1967 Protocol could modernize protections to better reflect current realities. Nonetheless, as of today, this approach faces considerable practical and political challenges. The Convention was originally created to address post-World War II displacement, not modern environmental crises. The advantages of redefining “refugee” include updating an outdated treaty to address contemporary drivers of displacement while maintaining existing exclusions (for example for criminals). In fact, explicitly recognizing climate-related displacement could increase international awareness and encourage more specific protective measures.⁴⁴ However, some critics argue that the existing Convention’s scope is already too broad and should be narrowed, not expanded. In this regard, broadening refugee status to include millions more displaced persons risks overwhelming the capacities and resources of destination countries. Other elements to carefully take into consideration are the numerous political realities characterized by nationalist sentiments and limited public empathy toward migrants, which further complicate prospects for change.⁴⁵

Despite these challenges, the international refugee regime still holds some relevance for those displaced by environmental issues, especially where there is a link between environmental damage and persecution. For example, environmental crises can trigger or worsen social and political instability that can lead to persecution or violent conflict which fall within the Refugee Convention’s scope. In this context, regional refugee instruments also provide broader protections. Notably, art. 1, para. 2, of the Organization of African Unity’s (OAU) 1969 Convention on Refugees expanded the refugee definition to include people displaced by “external aggression, occupation, foreign domination or events seriously disturbing public order”.⁴⁶ This regional approach shows how legal definitions evolve to reflect the complex realities of displacement, as this language could potentially encompass displacement caused by environmental collapse or related social unrest.

At a more fundamental level, environmental displacement challenges the core premise of refugee law that flight is caused by persecution or by states’ inability or

⁴⁴ Ivi, p.12.

⁴⁵ McAdam J., *Climate change, forced migration, and international law*, Oxford University Press, 2012.

⁴⁶ Noorda A.Y., *Climate Change, Disasters and People on the Move*, cit., p.9.

unwillingness to protect individuals from it.⁴⁷ Climate-induced displacement often results from systemic and gradual environmental changes that may not directly implicate state persecution but highlight gaps in international responsibility and protection. This distinction complicates the development of a comprehensive legal response to the needs of climate-displaced persons.⁴⁸

Although current international law on statelessness⁴⁹ does not extend to climate refugees or to what the International Centre of Comparative Environmental Law (CIDCE) describes as “environmentally displaced persons” (EDPs),⁵⁰ various proposals for reform and new legal instruments have been advanced, such as extending the Refugee Convention’s scope or creating new legal frameworks specifically for environmental displacement. However, despite the growing pressure that the international community is facing, none of these proposals have so far achieved widespread political support. The frequency and scale of climate-related displacement is expected to increase in the coming decades, with a consequent higher need of adapting existing legal regimes or developing new protections that recognize and respond to the realities of environmental migration.⁵¹

A significant example is provided by the Republic of Vanuatu, a small island state particularly vulnerable to climate change impacts. In March 2023 the State successfully urged the UN General Assembly to request an advisory opinion from the International Court of Justice (ICJ) on states’ obligations concerning climate change. This resolution (G.A. Res. 77/276, 2023) represents a landmark diplomatic effort, showing how small island developing states are innovatively leveraging international legal mechanisms to highlight their existential plight and demand greater accountability from more powerful nations. In this context, the recent advisory opinion of the ICJ represents another turning point in international law. The request itself, presented before the Court in 2023, had

⁴⁷ Eveno V. B. and Teles P.G., *Élévation du niveau de la mer et droit international: De l'adaptation à l'action*, Edition Pedone, 2022.

⁴⁸ Noorda A.Y., *Climate Change, Disasters and People on the Move*, cit., p.9.

⁴⁹ In international law, stateless people are the individuals not recognized as citizens by any country, even the country they were born in. Without a nationality, they are often unable to access basic rights and services. The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are the key international conventions that address statelessness.

⁵⁰ CIDCE (Centre International de Droit Comparé de l'Environnement), *Draft Convention on the Status of Environmentally Displaced Persons*, 4th version, 2018.

⁵¹ Borges, I.M., *Environmental Change, Forced Displacement and International Law: From Legal Protection Gaps to Protection Solutions*, First edition., Routledge, 2018.

already signaled the growing urgency and interest of states in the matter. Now that the opinion has been released, attention to the topic has resurfaced and new discussions have opened. While the Court has clarified certain issues, it has also raised new questions. In fact, several difficulties remain, particularly for people living in vulnerable island nations, highlighting the longstanding gaps in international governance regarding the protection of EDPs.⁵²

In 2022 the UN General Assembly recognized the right to a healthy environment (G.A. Res. 76/300, 2022). However, how this right will be put into practice is still unclear as well as its impact on the legal status of environmentally displaced persons. Additionally, even major climate agreements, such as the United Nations Framework Convention on Climate Change (UNFCCC) and its follow-up protocols, do not provide specific legal protections or status for those forced to leave their homes due to environmental harm or climate disasters. Thus, until concrete measures are adopted, EDPs largely remain without formal protection under international law, caught in a gray area between traditional refugee law and international environmental law.⁵³

Attention now shifts to the responsibilities of host states in protecting environmentally displaced persons. Considering the absence of an international consensus on the legal status of EDPs, refugee law, particularly the 1951 Refugee Convention and its 1967 Protocol (CRSR), represent the main documents used for defining the collective duties of host states towards refugees and for providing a conceptual framework to analyze the extent to which such duties might apply or be extended to EDPs.⁵⁴

International law traditionally upholds state sovereignty in matters of admission, meaning that states have no general obligation to admit foreign nationals unless bound by treaty obligations such as those found in the CRSR. According to the CRSR, international protection is granted, and states are obliged to protect refugees, when governments are unable or unwilling to provide basic guarantees to their citizens. Similarly, individuals displaced by environmental factors arguably have a claim to international protection

⁵² Ivi, p.14.

⁵³ McAdam J., *Climate change, forced migration, and international law*, cit., p.13.

⁵⁴ Erickson K.A., *Filling the Protection Gaps*, cit., p.11.

where their home states fail, whether due to incapacity or unwillingness, to ensure safe and sustainable living conditions.⁵⁵

However, the CRSR's refugee definition is considered to be legally narrow and does not explicitly cover EDPs. Article 1A(2) of the Convention defines a refugee as someone who has a "well-founded fear of persecution" based on specific grounds: race, religion, nationality, membership in a particular social group, or political opinion. Four cumulative elements are generally required by the definition: (1) a well-founded fear of persecution; (2) persecution linked to a Convention ground; (3) crossing an international border; and (4) inability or unwillingness to return to the country of origin.⁵⁶

Crucially, the Convention does not define "well-founded" or "persecution". Fear must be reasonably assessed in light of current or anticipated circumstances that threaten the individual in ways the government cannot or will not prevent. Nor does the Convention list environmental degradation as a form of persecution, which is typically intended as encompassing threats to life or freedom, the infliction of serious harm, or systemic violations of fundamental human rights, often with government complicity or consent.⁵⁷ In most cases of environmental displacement, individuals are escaping conditions that threaten their survival indirectly, as a result of inadequate state action or global environmental changes beyond their control. Therefore, the lack of direct persecution limits the applicability of refugee law to climate migrants.⁵⁸

To assist in determining refugee status, UNHCR has produced the Handbook on Procedures and Criteria for Determining Refugee Status (UNHCR Handbook), which clarifies that the fear must be based on one of the specified grounds, excluding those fleeing famine or natural disasters alone. In fact, the UNHCR Handbook explicitly states that victims of natural disasters cannot be considered beneficiaries of refugee status unless they also face persecution for one of the Convention reasons. Consequently, those fleeing environmental disasters, such as sea-level rise, earthquakes, or flooding, are not

⁵⁵ Ivi, p.15.

⁵⁶ Renno R., *È riconosciuto lo status di rifugiato climatico? Più di venti milioni di individui a rischio*, Geopop, 2024.

⁵⁷ Ibidem.

⁵⁸ Nevitt M., *Climate Change and the Specter of Statelessness*, 35 Georgetown Environmental Law Review 331, Emory Legal Studies Research Paper No. 22-29, 2024.

recognized as refugees under the Convention unless they can demonstrate an additional persecution element on Convention grounds.⁵⁹

Nonetheless, since the UNHCR Handbook does not define persecution in the context of environmental harm, commentators and some precedents have suggested that environmental degradation can constitute persecution under specific conditions - for instance, when environmental degradation is caused by state action or acquiescence. This becomes particularly relevant if specific social groups are disproportionately impacted, causing them serious threats to life or health.⁶⁰

For this reason, evaluating the element of “well-founded fear” often requires the adoption of an objective, context-sensitive approach. Indeed, when assessing claims, states must balance an applicant’s personal circumstances with broader humanitarian considerations, including present and future risks. For example, those who lose arable land due to desertification, homes due to rising seas, or livelihoods due to natural disasters, and who face starvation or severe deprivation, arguably have a reasonable basis to reject return to their place of origin. In this regard, international protection on humanitarian grounds may be justified in those cases where there is a proven inability or unwillingness of the home state to provide protection, whether due to resource limitations, conflict, or discriminatory practices.⁶¹

In fact, in some contexts, environmental harm has been weaponized as a form of persecution, sometimes referred to as “environmental cleansing.” This involves deliberate environmental manipulation aimed at subjugating or displacing particular groups based on race, ethnicity, religion, or political affiliation. An example is the draining of the marshlands of southern Iraq carried out in the 1990s, during Saddam Hussein’s regime, in order to displace Shi’a opposition groups. Such actions resulted in widespread ecological destruction and loss of life. They have been defined as intentionally inflicting conditions to achieve the destruction of a group and have been characterized as genocide.⁶²

⁵⁹ UN High Commissioner for Refugees (UNHCR), *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/ENG/REV, p.19, 2019.

⁶⁰ Nevitt M., *Climate Change and the Specter of Statelessness*, cit., p.16.

⁶¹ Erickson K.A., *Filling the Protection Gaps*, cit., p.11.

⁶² Cournil C. and Mazzega P., *Réflexion prospective sur une protection juridique des réfugiés écologiques*, cit., p.12.

Another significant example is the *Sarei v. Rio Tinto* case, where residents of Bougainville Island, Papua New Guinea, sued the mining company Rio Tinto in U.S. federal court under the Alien Tort Claims Act, alleging environmental destruction, along with health impacts, and racially discriminatory labor practices. Similarly, the Nigerian government was found guilty of “massive environmental violations” by the African Commission on Human and Peoples’ Rights, after being accused of oil pollution in Ogoniland, which resulted in malnutrition and displacement of indigenous Ogoni people. These cases, despite being class actions for damages rather than asylum claims, demonstrate the nexus between environmental harm, government complicity, and violations of human rights that support claims of persecution.⁶³

Additionally, the New Zealand Refugee Status Appeal Authority has recognized that the destruction of resources used for food production could constitute persecution meeting the Convention standard. This becomes particularly relevant when the actions target a specific group or community.⁶⁴

Nonetheless, persecution remains a central element of refugee status, and efforts for redefining or expanding this concept to include environmental harm have historically failed, posing significant legal difficulties in granting EDPs refugee status. Moreover, because environmental harms often affect populations indiscriminately, establishing a causal nexus between environmental damage and Convention grounds for persecution remains legally challenging.

Having clarified the conditions and the grounds on which is possible to obtain the refugee status, attention must be turned to the second part of the definition: “a person who (...) is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”.⁶⁵ In fact, those individuals forcibly displaced from their residence and unable or unwilling to seek the protection of the state of which they are nationals, may find protection from other host states. In this context, the principle of non-refoulement, that prohibits returning individuals to places where they would face persecution, torture, or

⁶³ McAdam J., *Climate change, forced migration, and international law*, cit., p.13.

⁶⁴ Ibidem.

⁶⁵ United Nations General Assembly, *1951 Convention Relating to the Status of Refugees*, United Nations, Treaty Series, vol. 189, p. 152, art. 1 A (2), 1951.

other serious harm, is fundamental to refugee protection and is now considered a principle of customary international law.⁶⁶

For EDPs, non-refoulement may apply if returning to their country of origin would expose them to life-threatening environmental conditions or other forms of harm. In 2011 the Horn of Africa drought caused massive displacement, Cases like the 2011 Horn of Africa drought and the consequent severe environmental degradation, which combined with state incapacity caused massive displacement, highlight the real-world implications of these protections.⁶⁷

Despite these complexities, some courts have considered whether the refugee definition can evolve to accommodate climate-related claims. For example, in *Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment* (New Zealand), the Court acknowledged the hardships caused by climate change and economic deprivation but ultimately found that refugee law was too narrow to grant protection, emphasizing that legislative bodies, not courts, should expand the definition.⁶⁸

Similarly, in *AD (Tuvalu) v. New Zealand Immigration and Protection Tribunal*, the Court recognized the humanitarian implications of environmental risks, which have a particular impact on vulnerable groups like children, However, it considered the situation as an exceptional humanitarian circumstance, rather than persecution under the Convention, and therefore chose not to extend refugee status.⁶⁹

The evolving discourse around climate displacement is increasingly pointing toward the need for new legal frameworks or the expansion of existing ones to address these emerging humanitarian challenges.⁷⁰

Despite its limited direct applicability, refugee law provides valuable conceptual tools for addressing climate displacement. First, it recognizes anticipatory flight, meaning that individuals may flee before harm actually occurs, provided that the fear of harm is reasonable and plausible and that the imminent risks are carefully assessed. Slow-onset climate changes, however, complicate timing assessments, making claims based on gradual environmental deterioration more difficult to sustain. Second, other factors may

⁶⁶ Nevitt M., *Climate Change and the Specter of Statelessness*, cit., p.16.

⁶⁷ Ibidem.

⁶⁸ Erickson K.A., *Filling the Protection Gaps*, cit., p.11.

⁶⁹ Ibidem.

⁷⁰ McAdam J., *Climate change, forced migration, and international law*, cit., p.13.

coexist with the element of persecution, which should not be considered as necessarily the only reason for flight. This complexity must be taken into account when assessing cases concerning climate displacement, as environmental changes often represent threat multipliers among other social, economic, or political vulnerabilities. However, isolating climate change as the cause of specific displacement events is still a scientific and legal challenge, which motivates international efforts toward broader protection instruments instead of developing specific refugee classifications for climate migrants.⁷¹

Having examined the limitations and potential of international refugee law in addressing the protection needs of EDPs, it becomes clear that this framework alone is insufficient to fully capture the complex nature of climate-induced displacement. Its narrow definition of “refugee” and the strict requirement for persecution on specific grounds exclude the vast majority of those displaced by environmental factors. Nonetheless, it still offers some relevant conceptual tools, such as anticipatory protection and the principle of non-refoulement. The following sections will focus on international human rights law and international environmental law, two branches of international law that may offer complementary or alternative solutions for protection. By analyzing how each legal regime addresses (or fails to address) the challenges faced by EDPs, this work will move beyond the refugee framework and will assess how the abovementioned regimes intersect, overlap, and potentially contribute to a more comprehensive approach to safeguarding individuals displaced by environmental degradation and climate change.

2. Human Rights Protection at the Universal and Regional Level

The inadequacy of international refugee law in addressing the complex realities of climate and environmental displacement emphasizes the need to explore complementary and alternative legal regimes capable of protecting affected individuals. Among these, international human rights law stands out as the most prominent and potentially far-reaching framework.⁷² Unlike refugee law, which is premised on specific grounds of

⁷¹ Ivi, p.19.

⁷² Kālin, W. and Weerasinghe S., *Environmental Migrants and Global Governance: Facts, Policies and Practices*, in McAuliffe, M. and Klein Solomon M. (Conveners) *Ideas to Inform International Cooperation on Safe, Orderly and Regular Migration*, IOM: Geneva, 2017.

persecution and requires a well-founded fear linked to narrow categories such as race, religion, or political opinion, human rights law operates on a more inclusive basis. It protects all individuals because of their inherent dignity, regardless of status, nationality, or cause of displacement. This makes it especially relevant in the context of climate-induced migration.⁷³

At its core, international human rights law applies both in times of peace and armed conflict, providing a stable basis of protection even in unstable or transitional circumstances. Its scope of application is wide: as affirmed in art. 2 of the Universal Declaration of Human Rights as well as in art. 1 of the European Convention on Human Rights, states are generally bound to uphold fundamental rights not only for their own citizens but also for anyone within their territory or under their jurisdiction. This consequently includes foreign nationals, stateless persons and migrants, which is especially relevant in the protection of environmental and climate-displaced individuals who often fall outside the refugee framework and whose mobility is shaped by a mix of push and pull factors rather than persecution *per se*. In this context, even though the human rights framework cannot be considered a full substitute for traditional refugee protection, it represents a possibility to turn to for filling important gaps left by it.⁷⁴

One of the most significant contributions of human rights law in this field lies in the principle of non-refoulement, a customary and treaty-based norm prohibiting the return of individuals to a country where they face a real risk of serious harm. This principle is a key pillar of international refugee law and exists independently in human rights instruments such as the Convention against Torture⁷⁵ and the International Covenant on Civil and Political Rights (ICCPR).⁷⁶ Its scope in human rights law is broader than that found in the Refugee Convention, as it applies not only to risks of

⁷³ McAdam J., *Protecting people displaced by the impacts of climate change: The UN Human Rights Committee and the principle of non-refoulement*, American Journal of International Law, 114(4), 708-725, 2020.

⁷⁴ Ibidem.

⁷⁵ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, United Nations, Treaty Series, vol. 1465, p. 86, art. 3(1), 1984.

⁷⁶ UN General Assembly, *International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999, p. 174-175, art. 6-7, 1966.

The ICCPR does not explicitly prohibit refoulement in a specific article. However, scholars have agreed on the deep connection of the principle of non-refoulement with art. 6 on the right to life and art. 7 on the prohibition of torture.

persecution but also to threats of torture, inhuman or degrading treatment, arbitrary deprivation of life and a number of other grave violations. This has led to the increasing recognition of its potential application in cases involving return to situations of severe environmental degradation and disaster.⁷⁷ Nonetheless, it is crucial to note that climate change itself does not constitute “treatment” or “punishment”. Rather, it is the consequences of exposure to such conditions, particularly when coupled with state neglect or systemic discrimination, that may rise to the level of harm prohibited by human rights law.⁷⁸

Nevertheless, the human rights framework has its limitations. First, it does not confer a right to enter or remain in a particular country. Unlike the refugee regime, which may under certain circumstances impose a duty of admission, human rights law only protects individuals from being sent back to danger; it does not oblige states to admit them in the first place. In fact, as further discussed in Chapter 2 (para. 2.1) of this dissertation, article 14 of the Universal Declaration of Human Rights recognizes a right to “seek and enjoy in other countries asylum from persecution”, but this remains aspirational and non-binding, and it cannot be equaled with a right to be granted asylum.⁷⁹

In practice, the human rights system does not provide clarity on the legal status of those who manage to enter a host country on environmental grounds. Therefore, those individuals protected exclusively under human rights law may remain in a legal limbo. Decisions on whether to admit or expel non-citizens largely fall within the sovereign prerogative of the receiving state, unless removal would violate specific non-refoulement provisions or other core rights. A person’s stay may be tolerated for humanitarian reasons,

⁷⁷ Nevitt M., *Climate Change and the Specter of Statelessness*, cit., p.16.

⁷⁸ McAdam J., *Protecting people displaced by the impacts of climate change*, cit., p.21. This possibility was notably affirmed in the 2011 Nansen Conference, which emphasized the relevance of human rights principles – particularly non-refoulement – as a basis for protecting persons displaced across borders by environmental harm but who do not fall under the refugee definition. The Nansen Conference on Climate Change and Displacement in the 21st Century, convened by the Norwegian Government 5–7 June 2011, in Oslo, gathered more than 230 academic experts from the humanitarian and scientific communities, representatives of governments, international agencies and civil society to explore the pressing need for policies and operational capacities to manage climate-change-induced displacement.

⁷⁹ Scott, M., *Climate change, disasters and the Refugee Convention*, Cambridge University Press, 2020.

but this does not necessarily translate into a long-term solution or into a recognized immigration status.⁸⁰

Moreover, also other international instruments, such as the International Convention on the Protection of the Rights of All Migrant Workers and Their Families, offer important but limited protection. This treaty applies only to persons engaged in remunerated activity and has been ratified by relatively few countries, most of which are states of origin rather than destinations for migrants. As a result, its practical utility in protecting climate-displaced persons remains narrow.⁸¹

Universal human rights treaties protect a broad scope of rights; however, their fulfilment is hindered by weak enforcement mechanisms. Many human rights bodies issue decisions that are not formally binding or lack the power to compel state compliance. However, the flexibility of this regime, its normative reach, and its evolving interpretations offer significant opportunities for protection. Its role in the protection of climate and environmental migrants should not be underestimated. It also shapes the interpretation and application of refugee law, migration law, and even international environmental law, serving as a point of intersection across different legal regimes. This intersectionality is particularly important given the multi-causal nature of environmental displacement and the overlapping of several legal regimes.⁸²

2.1. Universal Human Rights Instruments

At the international level, the normative foundation of human rights protection lies in the Charter of the United Nations and the Universal Declaration of Human Rights (UDHR), which together form the backbone of the international human rights system. In addition to these foundational instruments, the international legal framework includes nine core international human rights treaties, accompanied by several optional protocols, aimed at ensuring the respect, protection, and fulfillment of civil, political, economic, social, and cultural rights. In this context, the Office of the United Nations High Commissioner for Human Rights (OHCHR) was established, with the aim of promoting

⁸⁰ Ivi, p.22.

⁸¹ Kälén, W. and Weerasinghe S., *Environmental Migrants and Global Governance*, cit., p.20.

⁸² Kraler A., Katsiaficas C. and Wagner M., *Climate change and migration. Legal and policy challenges and responses to environmentally induced migration*, European Parliamentary Research Service, 2020.

and monitoring compliance with those principles. It works alongside ten treaty bodies, which include independent expert committees that issue general comments, review periodic state reports, and assess individual complaints. As of today, no treaty explicitly enshrines a right to be protected from the consequences of climate change or disasters, nonetheless the OHCHR has increasingly emphasized that such phenomena pose grave threats to the effective enjoyment of human rights.⁸³

In particular, the OHCHR has highlighted various human rights instruments and consequently numerous rights protected under them. These include rights enshrined in the ICCPR, such as the right to life, the right to be free from cruel, inhuman or degrading treatment, cultural rights, and self-determination, as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC). The latter, in particular, guarantees rights of children to survival and development, family unity, and protection from arbitrary separation.⁸⁴

Over the past two decades, national courts and tribunals have periodically been called upon to assess whether a state can lawfully deport individuals to countries where they face serious harm as a result of climate change impacts. These cases have raised legal questions about the applicability of the non-refoulement principle under refugee and human rights law to those exposed to life-threatening or degrading living conditions due to climate-related events. Until recently, such claims had consistently failed. The rationale was that the harm feared did not amount to “persecution” under refugee law, because the claimant was not affected in a sufficiently differentiated way compared to the broader population, or because the evidence was insufficient to prove a concrete and individualized risk.⁸⁵

However, in 2019, for the first time, the UN Human Rights Committee accepted in principle that it is unlawful to deport individuals to countries where the effects of climate change would expose them to a risk of violations of the right to life or of the prohibition of cruel, inhuman, or degrading treatment. This is considered to be a groundbreaking decision, marking a shift in the reliance on human rights mechanisms to hold states accountable for the consequences of climate inaction. In fact, the authoritative weight of

⁸³ International Organization for Migration, *Who Are Climate Migrants? A Global Analysis of the Profiles of Communities Affected by Weather-Related Internal Displacements*, 2024.

⁸⁴ Ibidem.

⁸⁵ McAdam J., *Protecting people displaced by the impacts of climate change*, cit., p.21.

the Committee's views and its substantive conclusion are likely to influence both jurisprudence and policymaking at national and international levels.⁸⁶

Parallel to this jurisprudential evolution, the OHCHR has continued its advocacy through research, dialogue, and support for resolutions within the UNHRC. The Council's first resolution on climate change and human rights, adopted in 2008, emphasized the connection between environmental degradation and fundamental rights, including the right to development and access to clean water. Subsequent resolutions have reinforced the notion that environmental sustainability is a necessary precondition for the realization of basic human rights, and in this sense, they also acknowledged the disproportionate impacts of climate change on vulnerable groups, such as people with disabilities and the elders.⁸⁷

A significant example of how these legal principles are linked to climate justice is the *Sacchi et al. v. Argentina et al.* case, where 16 children from various national backgrounds alleged that the respondent States' had failed to take adequate measures against climate change and had therefore violated their rights under the CRC. The Committee on the Rights of the Child issued its decision in 2021 and ultimately found the communication inadmissible for procedural reasons. Nonetheless, it affirmed that climate change adversely affects the enjoyment of children's rights even across borders, concluding that states may exercise effective control over emissions that cause foreseeable harm outside their territory.⁸⁸

The recognition of such extraterritorial responsibilities has strengthened calls by civil society and Indigenous Peoples' organizations for institutional reforms. In 2010 sustained advocacy efforts emerged, that in 2021 led to the establishment of the Special Rapporteur on the Protection of Human Rights in the Context of Climate Change.⁸⁹ In the same year, the UN Human Rights Council officially declared that a clean, healthy, and

⁸⁶ Ivi, p.24.

⁸⁷ Kraler A., Katsiaficas C. and Wagner M., *Climate change and migration*, cit., p.23.

⁸⁸ Ibidem.

⁸⁹ Piasentin E., *Escaping Climate Change: Who Are the "Environmental Migrants" in International Law?*, in *Freedom from Fear*, Volume 2016, Issue 12, p. 32 - 39, United Nations, 2016.

sustainable environment is a human right, which represented an historic milestone in connecting environmental protection with human rights law.⁹⁰

This evolution has led to a reinterpretation of international human rights law and of the right to life, in light of the existential threats posed by climate change. An example of this trend is found in Art.6 of the ICCPR, which enshrines the right to life as the “supreme right,” essential to the enjoyment of all other human rights, and explicitly non-derogable, as described by the UN Human Rights Committee. It is reaffirmed in Article 3 of the Universal Declaration of Human Rights (UDHR), in Article 6 of the Convention on the Rights of the Child (CRC), and across all major regional human rights instruments.⁹¹

The right to life is increasingly understood as deeply interconnected with other human rights such as the right to an adequate standard of living (including access to food, water, clothing, and housing) as well as the right not to be deprived of the means of subsistence. Climate change directly undermines these rights by disrupting the ecological and economic conditions that support them. Rising temperatures, sea-level rise, and environmental degradation threaten traditional subsistence practices such as hunting, fishing, gathering, and small-scale farming, therefore hindering both individual survival and the collective well-being of entire communities.⁹²

The Committee on the Rights of the Child has also underscored the link between the right to life and States’ duties to “ensure to the maximum extent possible the survival and development of the child.” It emphasizes that this right must be implemented in a comprehensive manner, through the realization of other rights under the CRC, including those related to health, adequate nutrition, social security, living standards, and a healthy environment. This holistic interpretation is also reiterated in the Inter-Agency Standing Committee (IASC)’s Operational Guidelines on the Protection of Persons in Situations of Natural Disasters.⁹³

More generally, the right to life imposes both positive and negative obligations on States. The latter include, for example, refraining from arbitrary deprivation of life, while positive obligations concern taking proactive steps to safeguard life, such as improving

⁹⁰ UN Human Rights Council, *The human right to a clean, healthy and sustainable environment*, Res. 48/13, 2021.

⁹¹ International Organization for Migration, *Who Are Climate Migrants?*, cit., p.24.

⁹² Cournil C. and Mazzega P., *Réflexion prospective sur une protection juridique des réfugiés écologiques*, cit., p.12.

⁹³ International Organization for Migration, *Who Are Climate Migrants?*, cit., p.24.

public health, ensuring food security, and protecting the environment. Useful to the explanation of this concept is the UN Human Rights Committee's observations on nuclear weapons. In fact, these weapons constitute a threat both directly, through their immediate lethality, and indirectly, by contaminating the environment and undermining long-term survival. In a similar way, the impacts of climate change, such as the contamination of freshwater supplies by saltwater, can represent a violation of the right to life, depending on the severity, scope, and irreversibility of the harm.⁹⁴

In addition to these developments, policy instruments such as the Global Compact for Safe, Orderly and Regular Migration (GCM) and the Paris Agreement under the UNFCCC have integrated climate-related human mobility into their respective frameworks. The GCM was adopted in 2018, and it is the most comprehensive global framework on migration. Despite it being non-binding, it explicitly addresses the drivers and governance of climate-induced displacement. Since its adoption, some States have increasingly integrated climate migration provisions into national policies (as seen in Peru and the Solomon Islands) and into regional strategies in Africa, the Pacific, and the Caribbean.⁹⁵ Bilateral arrangements, such as the agreement between Australia and Tuvalu, also underscore the emerging recognition of climate-related mobility at the policy level.

Moreover, significant progress on this issue has been achieved through the Task Force on Displacement and the Santiago Network, established under the Paris Agreement with the aim of providing technical guidance and assistance to countries dealing with climate displacement.⁹⁶ Particularly effective has also been the newly established Fund for responding to Loss and Damage (FRLD), which comprises nearly USD 700 million in pledges. The Fund was established at COP28, in 2023, through an agreement reached by 198 countries, with the aim of providing financial support to vulnerable developing countries that are hardest hit by climate impact. It offers assistance in response to economic as well as non-economic loss and damage associated with the adverse effects of climate change. The FRLD is also the first climate finance mechanism to explicitly

⁹⁴ Cournil C. and Mazzega P., *Réflexion prospective sur une protection juridique des réfugiés écologiques*, cit., p.12.

⁹⁵ Nevitt M., *Climate Change and the Specter of Statelessness*, cit., p.16.

⁹⁶ International Organization for Migration, *Who Are Climate Migrants?*, cit., p.24.

mention human mobility within its scope and engage with affected populations, including migrants.⁹⁷

Meanwhile, operational actors such as the International Organization for Migration (IOM) have expanded their engagement in the climate–migration nexus. In 2021 the Organization launched its Institutional Strategy on Migration, Environment and Climate Change (2021–2030), a document based on the understanding that migration is a phenomenon deeply linked to human rights, climate justice, and mobility governance. The three key pillars of the strategy reflect this approach, focusing on enabling people to move, protecting those already on the move, and creating conditions for people to stay.⁹⁸

The specter of statelessness related to climate change shows the fundamental tension between state sovereignty and international responsibility.⁹⁹ As entire island nations face the possibility of territorial disappearance due to sea-level rise, the very foundations of the UN Charter, specifically its emphasis on sovereign equality, are challenged. The Security Council, whose primary responsibility is the maintenance of international peace and security under Article 24 of the UN Charter, may find itself increasingly compelled to address the geopolitical implications of climate change. For over 75 years, the principle of sovereign equality has been a stabilizing force in international relations. However, a reevaluation of traditional notions of peace, conflict, and sovereignty has become necessary, considered the increase of the existential threats posed by rising sea levels, intensified precipitation, and catastrophic flooding.¹⁰⁰

As established by article 39 of the UN Charter, the Security Council has the authority to determine the existence of a “threat to the peace, breach of the peace, or act of aggression”. As of today, these terms remain undefined, nonetheless they provide the Council with the legal gateway to exercise the broad enforcement powers under Chapter VII, including economic sanctions, trade prohibitions, or even military intervention. A recognition that climate change constitutes a “threat to the peace” would enable the Council to invoke these tools in the name of collective security. Such actions might include imposing sanctions against “climate rogue states” that fail to fulfill their mitigation responsibilities, or banning the trade of harmful climate-damaging goods, such

⁹⁷ World Bank Group, *Fund for Responding to Loss and Damage*, 2023.

⁹⁸ Ibidem.

⁹⁹ Nevitt M., *Climate Change and the Specter of Statelessness*, cit., p.16.

¹⁰⁰ Ibidem.

as illegal timber or environmentally hazardous chemicals.¹⁰¹ An hypothetical case, that might, in the future, require international intervention under these powers requires former Brazilian President Jair Bolsonaro and its failure to protect the Amazon rainforest, an essential global carbon sink.¹⁰²

Even the prospect of military operations cannot be excluded. Although, as of today, it is difficult to imagine, some scholars have speculated that the Security Council might authorize the use of force to respond to massive climate displacement, facilitating large-scale evacuations following extreme weather events needs to be taken into consideration. Since the end of the Cold War, the Security Council has broadened its mandate to include nontraditional threats, from global health crises like Ebola and COVID-19 to the spread of weapons of mass destruction and transnational terrorism. This expansion has demonstrated both a growing willingness and an emerging capacity to address diffuse, complex threats to international peace and security.¹⁰³

Moreover, climate change has begun to deeply influence political decisions even among developing countries that were historically skeptical of linking climate issues with security. In 2017, the Security Council for the first time acknowledged climate change in a resolution, recognizing its destabilizing effects on security in the Lake Chad Basin (UNSC Res. 2349). While the Council has yet to issue a Chapter VII “threat to the peace” determination based explicitly on climate change, this growing recognition represents an important normative shift.¹⁰⁴

Parallel to these developments within the Security Council, international law has also evolved to address humanitarian needs arising from environmental disasters. While classical international humanitarian law traditionally applies only to situations of armed conflict, new legal and quasi-legal mechanisms have been created in response to ecological catastrophes. Since the early 1980s, non-governmental organizations (NGOs) have intervened in environmental disaster zones under the so-called “right of humanitarian interference”, which refers to a form of “right to international humanitarian assistance”.¹⁰⁵ This concept, which fundamentally challenges the principle of state

¹⁰¹ McAdam J., *Protecting people displaced by the impacts of climate change*, cit., p.21.

¹⁰² Nevitt M., *Climate Change and the Specter of Statelessness*, cit., p.16.

¹⁰³ Ibidem.

¹⁰⁴ International Organization for Migration, *Who Are Climate Migrants?*, cit., p.24.

¹⁰⁵ Counil C. and Mazzega P., *Réflexion prospective sur une protection juridique des réfugiés écologiques*, cit., p.12.

sovereignty and consequently of non-intervention, has led to intense debate among scholars and states.

In this context, two General Assembly resolutions are particularly relevant. The first one, Resolution 43/131 (8 December 1988), was adopted mainly as a result of the significant pressure from France and outlined the “principle of free access to victims of natural disasters and other emergency situations”. This was followed by Resolution 45/100 (14 December 1990), which introduced the notion of “humanitarian corridors” based on the right of innocent passage in maritime law. These corridors aimed at facilitating the delivery of humanitarian assistance, such as water, food, medicine, and shelter, across the territory of affected states. From this perspective, these resolutions have been fundamental in encouraging those states affected by disasters to cooperate with humanitarian actors and in granting NGOs with legal legitimacy for their operations. Therefore, they paved the way for a form of humanitarian intervention that is now considered as an operational dimension of human rights protection.¹⁰⁶

These resolutions and the Security Council’s evolving interpretation of “threats to the peace” under Chapter VII, set the ground for a broad transformation in the international legal order, complemented by the growing acceptance of humanitarian assistance frameworks. Climate change, while traditionally framed as an environmental or developmental issue, is increasingly considered as an issue of international peace and security, human rights, and humanitarian law. This shift is not merely theoretical, it has concrete implications on how the international community may respond to the displacement of millions, the erosion of statehood, and the growing demands for climate justice.¹⁰⁷ In this context, it is clear that the issue can no longer be confined to only soft-law instruments or development cooperation alone. Enforceable international norms are increasingly necessary to address climate-induced migration and displacement, whether through the Security Council’s Chapter VII mechanisms, the jurisprudence of human rights treaty bodies, or the legal innovations emerging from humanitarian practice.¹⁰⁸

¹⁰⁶ Ivi, p.29.

¹⁰⁷ Nevitt M., *Climate Change and the Specter of Statelessness*, cit., p.16.

¹⁰⁸ Ibidem.

2.2. Regional Human Rights Systems

At the regional level, the European system provides human rights protection primarily through the European Court of Human Rights (ECtHR), whose role is to ensure Member States uphold the human rights protected under the European Convention on Human Rights (ECHR). The Court has developed significant jurisprudence on climate-related displacement, which mostly draws upon Article 3 of the ECHR (prohibition of inhuman or degrading treatment) and Article 2 (right to life) to establish the principle of non-refoulement. In this sense, the Court established that States must not deport or expel individuals to countries where there are substantial grounds for believing they would face a real risk of being subjected to torture, arbitrary killing, or other serious violations of fundamental rights. In such cases, even if the threat is caused by non-State actors or environmental conditions, and therefore not by the receiving State's authorities directly, the duty not to return an individual emerges.¹⁰⁹

This approach does not primarily assess the conduct of the destination State but rather focuses on the responsibility of the expelling State. If a State, fully aware of the risk, returns individuals to their country of origin, exposing them to inhuman treatment or death, it violates its obligations under the ECHR.¹¹⁰ While this jurisprudence has developed mainly in the context of political violence, persecution or extreme socio-economic vulnerability, the Court has also considered broader applications. In *D. v. United Kingdom*, for instance, the ECtHR recognized that Article 3 could, in exceptional cases, apply even when the source of harm in the receiving country does not directly or indirectly involve State actors.¹¹¹

As of today, however, the ECtHR has not upheld a non-refoulement claim solely on the basis of threats to life resulting from environmental degradation or climate change. In fact, all successful non-removal claims have been grounded in the broader prohibition of inhuman or degrading treatment established in Article 3. Even before the United Nations Human Rights Committee, success has been limited to cases claiming a violation of Article 7 (prohibition of torture and ill-treatment), oftentimes complemented by Article

¹⁰⁹ Kälin, W. and Weerasinghe S., *Environmental Migrants and Global Governance*, cit., p.20.

¹¹⁰ Ibidem.

¹¹¹ Ibidem.

6 (right to life). The *Teitiota* case represents therefore a significant exception, particularly because it was based primarily on the threat to life posed by climate change.¹¹²

Yet, the link between human rights and environmental protection has been gradually acknowledged in international legal reasoning. As early as 1997, in a Separate Opinion in the *Gabčíkovo-Nagymaros Project* case in the ICJ, Judge Weeramantry noted that the protection of the environment is “a vital part of contemporary human rights doctrine”, serving as an indispensable condition for the enjoyment of rights such as the right to health and the right to life.¹¹³ This pronouncement underscored the dependence of certain human rights on a stable and habitable environment; however, it did not establish an explicit right to a healthy environment.¹¹⁴

This connection is increasingly reflected in ECtHR jurisprudential evolution. The Court has recognized that environmental degradation may have an impact on the rights protected under the Convention, including the right to life (Article 2), the right to respect for private and family life and home (Article 8), and the right to property (Article 1 of Protocol No. 1).¹¹⁵ In *Öneryıldız v. Turkey*, the ECtHR’s ruling established that Article 2 implies a positive obligation for States, that must provide “a legislative and administrative framework” to prevent threats to life caused by environmental hazards.¹¹⁶ Although such environmental considerations have not yet arisen in the context of removal or deportation proceedings, they form part of a growing body of case law that strengthens the normative foundation for linking environmental harm and human rights violations.¹¹⁷

In a similar way, in *Budayeva v. Russia*, the Court found that the State had failing to implement adequate early warning systems and civil protection measures against a foreseeable natural disaster and had therefore violated Article 2. The ruling emphasized that a State’s duty to protect life extends to circumstances involving natural hazards,

¹¹² McAdam J., *Protecting people displaced by the impacts of climate change*, cit., p.21.

¹¹³ International Court of Justice, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, (Separate Opinion of Judge Weeramantry), p.4, 1997.

¹¹⁴ Nevitt M., *Climate Change and the Specter of Statelessness*, cit., p.16.

¹¹⁵ Scott, M., *Natural disasters, climate change and non-refoulement: What scope for resisting expulsion under Article 3 and 8 of the European Convention on Human Rights*, *International Journal of Refugee Law*, 28(3), 404-436, 2014.

¹¹⁶ European Court of Human Rights, *Öneryıldız v. Turkey*, App. No. 48939/99, para. 3(a)(i), 2004.

¹¹⁷ Scott, M., *Natural disasters, climate change and non-refoulement*, cit., p.32.

where the risk has been identified and can be prevented through appropriate governance.¹¹⁸

European jurisprudence is particularly relevant for EDPs as it underscores the obligations of home States to protect individuals from environmental harm, whether caused by public authorities or private actors. The ECtHR has adopted the “fair balance” approach to adjudicate the rights of the individual against the collective interests of society. States are given a margin of appreciation in determining how best to meet environmental standards, yet this does not absolve them of responsibility. Therefore, even when environmental harm is not directly caused by the state, governments have a positive obligation to prevent foreseeable risks and to ensure that human rights are not undermined by environmental hazards. Such reasoning sets a significant precedent for future climate-related cases, indicating that even in the absence of an explicit right to a healthy environment, regional human rights law may still provide meaningful protection for those displaced or otherwise harmed by environmental degradation.¹¹⁹

3. Environmental Migration under International Environmental Law

International environmental law has become increasingly relevant as states and international institutions confront the growing threat posed by climate change. Even though it is still insufficient in providing a comprehensive and substantial legal framework for protecting those displaced by environmental degradation, it does offer some entry points to be taken into account. However, it is important to underline that these are often indirect, fragmented, and largely insufficient when applied in isolation.¹²⁰

A major development in this area is the Paris Agreement, a legally binding international treaty adopted under the UN Framework Convention on Climate Change (UNFCCC) during COP21 in 2015 and since ratified by 189 states. It represents a cooperative global effort to mitigate climate change and adapt to its consequences, such as displacement and migration. The main objective of the Paris Agreement is to keep the

¹¹⁸ European Court of Human Rights, *Budayeva and Others v. Russia*, App. Nos. 15339/02 et al., 2008.

¹¹⁹ Çalı B., Biancu L., and Motoc I., *Migration and the European Convention on Human Rights*, Oxford University Press, 2021.

¹²⁰ Erickson K.A., *Filling the Protection Gaps*, cit., p.11.

rise of the global temperature below 2°C above pre-industrial levels and to pursue efforts to limit the increase to 1.5°C, while strengthening countries' ability to deal with the impacts of climate change.¹²¹ Its preamble refers explicitly to “human rights” and “the rights of migrants”, encouraging states to consider these issues when developing climate policies, even though there is no explicit mention of “climate migrants” or “refugees”.¹²²

The Paris Agreement encourages the development of national adaptation plans based on the specific needs, priorities, and vulnerabilities of each state, which may include considerations related to environmental displacement. In fact, among the main requirements there is the obligation to submit nationally determined contributions (NDCs) every five years, through a process based on principles of transparency, accountability, and progressive ambition. These documents aim at describing each Party's most ambitious mitigation and adaptation projects, including measures to reduce emissions and strengthen resilience.¹²³ Despite these efforts, the commitments contained in NDCs are not enforceable in a strict legal sense and the Agreement contains no binding enforcement mechanisms or penalties for non-compliance, making it quite aspirational in its ability to protect those most at risk, including environmentally displaced persons.¹²⁴

From a broader perspective, international environmental law has long emphasized the concept of “common concern of humankind”, which is mentioned in the preamble to the UNFCCC and suggests a collective responsibility in addressing climate change. This principle can serve as a bridge between environmental obligations and human rights protections, potentially justifying the extension of state obligations to climate migrants beyond their borders. However, this interpretation remains largely theoretical and has not been concretely put in place through binding legal instruments.¹²⁵

Further reinforcing this approach is the due diligence obligation, a key principle of international environmental law derived from the concept of prevention. This principle obliges states to take all appropriate measures to prevent environmental harm, including transboundary harm. Due diligence obligations have been codified in several multilateral environmental treaties, such as the Convention on Long-Range Transboundary Air

¹²¹ Ivi, p.33.

¹²² Sussman C.M., *A Global Migration Framework Under Water: How Can the International Community Protect Climate Refugees?*, Chicago Journal of International Law, 2023.

¹²³ Erickson K.A., *Filling the Protection Gaps*, cit., p.11.

¹²⁴ Sussman C.M., *A Global Migration Framework Under Water*, cit., p.34.

¹²⁵ Ibidem.

Pollution (1979) and the Vienna Convention for the Protection of the Ozone Layer (1985), as well as in Art. 3 of the International Law Commission's Draft Articles on Prevention of Transboundary Harm from Hazardous Activities. Due diligence operates not only as a standard of conduct, indicating how states should behave, but also as a substantive obligation requiring fact-finding, policy formulation, and domestic legislation to prevent foreseeable harm.¹²⁶

Throughout the years, judicial developments have reaffirmed and expanded the scope of this obligation. Chapter 2 of this dissertation will delve deeper into the ICJ's most recent Advisory Opinion, issued in July 2025, on the Obligations of States in Respect of Climate Change.¹²⁷ In this decision, the Court affirmed that climate obligations are legal, substantive and enforceable. States are, in fact, obliged to prevent significant environmental harm, cooperate internationally and uphold fundamental human rights despite increasing climate risks.¹²⁸

Another relevant case is *Verein KlimaSeniorinnen v. Switzerland*, where the ECtHR found that Switzerland had failed to adopt adequate measures to mitigate climate change, and had therefore violated the applicants' rights to life and health under the European Convention on Human Rights (par. 23). Similarly, article 194(1) of UNCLOS establishes that states must act to "prevent, reduce, and control pollution of the marine environment", including pollution stemming from greenhouse gas emissions. This obligation was also reiterated in the 2024 Advisory Opinion on Climate Change issued by the International Tribunal for the Law of the Sea (ITLOS)¹²⁹. Even though neither court imposed strict liability, both affirmed that states must act with due diligence, meaning they are accountable not for failing to meet specific climate targets, but for not taking reasonable steps to pursue them.¹³⁰

These recent interpretations, further strengthening the link between international environmental law and human rights law, create new ways for broader and more

¹²⁶ Sharma D., *Defining Due Diligence Obligation of States in Relation to Climate Change*, Cambridge International Law Journal, 2024.

¹²⁷ International Court of Justice, *Obligations of States in respect of Climate Change*, 2025.

¹²⁸ Tigre M. A., Bönnemann, M., and De Spiegeleir, A., *The ICJ's Advisory Opinion on Climate Change: An Introduction*, VerfBlog, 2025.

¹²⁹ Sharma D., *Defining Due Diligence Obligation of States in Relation to Climate Change*, cit., p.35.

¹³⁰ Ibidem.

integrated protections. In the future, regional human rights mechanisms may also play a greater role in climate-related displacement cases.¹³¹

In addition to the UNFCCC and the Paris Agreement, the UN Convention to Combat Desertification (UNCCD, 1994) also recognizes the connection between environmental damage and migration, even though its acknowledgment is limited. This binding treaty states that gradual processes like drought and desertification are key drivers of displacement. It requires parties to cooperate on research, data sharing, and policy coordination in order to help contain and reduce such phenomena. However, the UNCCD focuses more on prevention and adaptation rather than on providing direct legal protection for those already displaced. This approach is also reflected in other international environmental law instruments, which often address only few environmental factors contributing to migration, making it insufficient as a standalone framework.¹³²

The limitations discussed so far are significant, nevertheless international environmental law is gradually evolving. This development is rooted in the principles of due diligence, common but differentiated responsibilities, and prevention. In this regard, states may be held responsible for addressing displacement caused by environmental harm, not necessarily through punitive measures, but through expectations of proactive and reasonable conduct. Furthermore, advisory opinions and jurisprudence from international and regional bodies are beginning to consolidate these principles into a more cohesive body of law.¹³³

¹³¹ Sussman C.M., *A Global Migration Framework Under Water*, cit., p.34.

¹³² Ibidem.

¹³³ Erickson K.A., *Filling the Protection Gaps*, cit., p.11.

CHAPTER II

Contentious and Advisory Jurisdiction in Environmental Migration Cases

SUMMARY: 1. The Role of UN Agencies and Treaty Bodies. – 2. Challenges and Opportunities before International Human Rights Bodies. – 3. The Role of the International Court of Justice.

This chapter aims at analyzing the multiple ways in which international litigation engages with climate change. On one side, this interconnection is shown through advisory proceedings before any international judicial body, such as ITLOS, the IACtHR and the ICJ, and could soon be extended to the African Court of Human and Peoples' Rights (AfCHPR); on the other side, through contentious proceedings, including those initiated before regional human rights courts and quasi-jurisdictional procedures under human rights treaties or under the UN Human Rights Council¹³⁴.

In 2019, five UN human rights treaty bodies issued a Joint Statement on Human Rights and Climate Change, acknowledging that climate change represents a significant threat to the enjoyment of human rights protected under their respective conventions.¹³⁵ They explicitly encouraged States to offer complementary protection mechanisms for migrant workers “[...] displaced across international borders in the context of climate change and disasters”.¹³⁶

This position can be considered as part of a broader normative framework, which includes the Global Compact for Safe, Orderly and Regular Migration, an inter-governmentally negotiated agreement adopted in 2018 which represents a rather comprehensive response to the matter at the UN level. Specifically, the latter recognizes environmental disasters as drivers of forced migration and underlines the urgency of ensuring adequate protection for affected individuals. Through Objective 5 it calls on

¹³⁴ Mayer B. and van Asselt H., *The rise of international climate litigation*, RECIEL, 32(2): 175-184, 2023.

¹³⁵ Scissa C., *Environmental Migration at the International Level: What's There, What's Not, and What's Needed?*, Lebanese American University, 2022.

¹³⁶ United Nations, *Statement on human rights and climate change: joint statement / by the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities*, p.4, para 15, 2019.

participating States to use protection mechanisms “[...] based on compassionate, humanitarian, or other considerations for migrants compelled to leave their countries of origin owing to sudden-onset natural disasters”, as well as to devise planned relocation.¹³⁷

The idea of international climate litigation, even when understood in a narrow sense, as strategic litigation aimed at promoting the adoption of mitigation policies, is not new. For the last two decades, small island developing States have been among the first actors to bring cases before the ICJ. In 2005, the Inuit Circumpolar Conference submitted a petition to the Inter-American Commission on Human Rights, which was dismissed before it could even gain momentum. In 2011, the State of Palau launched a campaign, calling on the United Nations General Assembly to request an advisory opinion from the ICJ. This initiative ended up being unsuccessful as well.¹³⁸

However, in the last few years, these States have shown increasing determination and have been receiving wider support. Within just a few months, numerous advisory opinions were requested before three different international courts: ITLOS in December 2022, the IACtHR in January 2023 and the ICJ in March 2023.¹³⁹ A similar request is likely to be made before the AfCHPR. Meanwhile, around a dozen contentious cases have been filed before the ECtHR, of which nine remain pending. Moreover, numerous UN human rights treaty bodies have adopted statements on climate change and human rights, made recommendations to some States on their climate policies, and decided on individual complaints touching on aspects related to climate change.¹⁴⁰

Nonetheless, it is important to note that international litigation can be a double-edged sword: it may promote climate action but might also get in the way of it. This is particularly noticeable in the field of international investment law¹⁴¹. An example is the

¹³⁷ Scissa C. and Bossi M., *Strumenti giuridici esistenti a livello internazionale, europeo e nazionale per la tutela dei migranti ambientali: intervista a Chiara Scissa*, 2022.

¹³⁸ Mayer B. and van Asselt H., *The rise of international climate litigation*, cit., p.37.

¹³⁹ Ibidem.

¹⁴⁰ Scissa C., *Environmental Migration at the International Level*, cit., p.37.

¹⁴¹ International investment law comprises the body of norms governing the promotion and protection of private foreign investments, as well as the relationship between a private investor and the host State. The international investment regime is primarily based on Bilateral Investment Treaties (BITs) and Multilateral Investment Treaties (MITs), which typically include the main standards of protection for foreign investors and investments—such as Fair and Equitable Treatment (FET), the prohibition of direct and indirect expropriation, non-discrimination, the Most-Favored-Nation (MFN) clause, and other related guarantees. Disputes are usually resolved before arbitration fora, most notably ICSID, or before ad hoc arbitral tribunals. Whether before ICSID or an ad hoc tribunal, the initiation of arbitral proceedings requires the parties’ prior

2022 ICSID award which found that Italy had unlawfully expropriated the company Rockhopper by withdrawing its approval for an oil-and-gas extraction project¹⁴². International trade law can also represent a field of tension, especially if considering, for instance, the disputes already under discussion, such as the one initiated by India against the European Union's proposal to introduce a "carbon border adjustment mechanism" for the importation of certain goods.¹⁴³

In other cases, recourse to international litigation produces more ambivalent effects on climate action, as in the case of the so-called "just transition litigation", aimed at addressing the human rights repercussions arising from the very measures of ecological transition.¹⁴⁴

1. The Role of UN Agencies and Treaty Bodies

As previously mentioned, the Preamble of the Paris Agreement represents the first explicit link between climate change and human rights in a climate treaty. Over the years, human rights bodies have issued several documents addressing the impact that climate change has on human rights, advocating for a human rights-based approach to climate action. These developments, paired with the constitutional protection of human rights at domestic level, have been used as legal ground in numerous lawsuits. Data show that, as of today, there have been almost 120 cases on these issues, with few still pending.¹⁴⁵

Despite most of these cases being brought before domestic courts with only a small percentage taking place before international human rights bodies at the regional and universal levels, the latter still serve as the primary international fora for climate change

consent. Arbitration offers the advantage of depoliticizing disputes, ensuring greater independence and autonomy of adjudicators, and providing enhanced protection to private investors by avoiding reliance on domestic courts.

¹⁴² International Centre for Settlement of Investment Disputes (ICSID), *Rockhopper Italia S.p.A., Rockhopper Mediterranean Ltd, and Rockhopper Exploration Plc v. Italian Republic*, ICSID Case No. ARB/17/14 (Award), 2022.

¹⁴³ Mayer B. and van Asselt H., *The rise of international climate litigation*, cit., p.37.

¹⁴⁴ Ibidem.

¹⁴⁵ Loporini R., *Climate Change Litigation before International Human Rights Bodies: Insights from Daniel Billy et al. v. Australia (Torres Strait Islanders Case)*, *The Italian Review of International and Comparative Law*, 3.2, 238-259, 2023.

litigation. Consequently, inter-state climate cases before international courts such as the ICJ or ITLOS are still missing.¹⁴⁶

Litigations on these issues are particularly relevant due to their international character and strategic ambition. In fact, complaints before international human rights bodies are often classified as “pro-climate” or “pro-regulatory”, since they aim at encouraging States to advance their climate policies while raising public awareness.¹⁴⁷

Against this background, the following subsections focus on three emblematic cases: *Daniel Billy and Others v. Australia*, *Teitiota v. New Zealand*, and *Sacchi et al. v. Argentina et al.*

1.1 *Daniel Billy and Others v Australia (Torres Strait Islanders Petition)*

The first case in which an international (quasi-) judicial body has found human rights violations in relation to climate change based on an individual complaint is *Daniel Billy et al. v. Australia*. In this lawsuit the UN Human Rights Committee found the State responsible for the violation of fundamental human rights, for failing to adopt sufficient national measures to fight climate change.¹⁴⁸

The authors of the communication are eight Australian nationals and members of the indigenous people inhabiting the Torres Strait Islands. They also filed the communication on behalf of six children (sons and daughters of two applicants). The authors claimed to be among the populations most vulnerable to the impacts of climate change, noting the flooding and coastal erosion on the low-lying islands they inhabit. In fact, they reported some of their villages being inundated every year, with soil salinization rendering unsuitable for gardening many areas.¹⁴⁹ Other elements noted by the authors were the extreme weather events such as cyclones, exacerbating shoreline loss, as well as higher temperatures and ocean acidification affecting the coral reefs, the marine ecosystem and its resources. In this case, the governmental Torres Strait Regional

¹⁴⁶ British Institute of International and Comparative Law, *Promoting Climate Justice through International Law: Climate Litigation & Climate Advisory Opinions*, 2023.

¹⁴⁷ Ibidem.

¹⁴⁸ United Nations Human Rights Committee, *Daniel Billy et al v Australia*, UN Doc CCPR/C/135/D/3624/2019, 2022.

¹⁴⁹ Cordes-Holland O., *The Sinking of the Strait: The Implications of Climate Change for Torres Strait Islanders' Human Rights Protected by the ICCPR*, Melbourne Journal of International Law., vol. 9, no. 2, pp. 405–38, 2008.

Authority recognized that the impacts are likely expected to escalate over time and in 10-15 years most of the inhabitants will be displaced. On this basis, the authors claimed that Australia had violated their rights to private, family and home life, as well as their right to culture, as enshrined respectively in Articles 17 and 27 of the ICCPR. Moreover, they also alleged a violation of Article 6 (right to life) and Article 24 (rights of the child) in relation to the rights of the six children involved in the case.¹⁵⁰

The claim stems from the idea that the State Party “failed to implement an adaptation program to ensure the long-term habitability of the islands”,¹⁵¹ disregarding the numerous requests for assistance and funding made by the authors and their communities.¹⁵² The petitioners affirmed that the Government had failed to comply with its duty to meet specific standards in order to mitigate climate change, in particular with regard to curbing greenhouse gas (GHG) emissions. They noted that Australia’s emissions have consistently risen since 1990, placing the country among the world’s highest emitters. Consequently, this persistent failure constituted a breach of Australia’s positive obligation under the Covenant to protect their human rights.¹⁵³

However, Australia, contested the admissibility of the applicants’ communication. First, it argued that the alleged violations of international climate change agreements do not fall within the scope of the ICCPR. Second, it submitted that the applicants had not sufficiently substantiated their case, given the absence of clear proof that their rights were facing the consequences invoked or were imminently threatened by them. According to the respondent, it is impossible to establish a direct causal relationship between the Country’s alleged inaction and the claimed rights violations, since the phenomenon of climate change cannot be attributed solely to Australia.¹⁵⁴

For the Torres Strait Islanders, the most alarming evidence of climate change has been the approximate 17-centimetre rise in global sea levels over the course of the 20th

¹⁵⁰ Ivi, p.40.

¹⁵¹ United Nations Human Rights Committee, *Daniel Billy et al v Australia*, UN Doc CCPR/C/135/D/3624/2019, p.3, para 2.7, 2022.

¹⁵² Ibidem.

¹⁵³ Ceretelli C., *Tutela dei diritti umani e lotta al cambiamento climatico: il caso Torres Strait Islanders dinanzi al Comitato dei diritti umani*, in “Diritti umani e diritto internazionale, Rivista quadrimestrale”, pp. 765-777, 3/2023.

¹⁵⁴ Ibidem.

century. The tangible increase in sea levels has led many members of the community to the conclusion that climate change is already a lived reality.¹⁵⁵

The case was brought before the UN Human Rights Committee. In its Views, the Committee found the Communication to be admissible, concluding that the risk of impairment of rights “owing to alleged serious adverse impacts that have already occurred and are ongoing, is more than a theoretical possibility”.¹⁵⁶ Three important aspects were highlighted in the Committee’s Views. First, in this case the applicants succeeded in overcoming several of the typical hurdles that often prevent climate complaints from moving forward before international human rights bodies. Second, the Committee concluded that Australia had violated human rights only because it failed to adopt adequate climate change adaptation measures, while it did not address the country’s mitigation policies. Third, since this was the first climate complaint to succeed before an international human rights body, the Committee’s Views raise important questions about the broader impact of this kind of climate litigation.¹⁵⁷

On the merits, the Committee held that Australia had violating the authors’ rights to private, family and home life and to culture, as enshrined in Articles 17 and 27 of the ICCPR. However, the violation was intended as a result of Australia’s failure to implement “timely adequate” adaptation measures in order to mitigate the adverse effects of climate change on the Islands. In particular, the State Party had not provided any convincing explanation for the delay in building seawalls on the Islands. This delay showed that the State Party’s response to the risks faced by the authors was insufficient. On the other hand, although the Committee recognized that Australia ranks among the world’s major greenhouse gas emitters, it did not find a violation of Articles 17 and 27 based on shortcomings in the country’s mitigation policy, which it chose not to address.¹⁵⁸

The Committee also concluded that there had been no violation of Article 6, which protects the right to life. It reaffirmed that States have a duty to safeguard this right against reasonably foreseeable risks stemming from the harmful effects of climate change. However, in this case, the Committee noted that the authors had not shown that their right

¹⁵⁵ Ivi, p.41.

¹⁵⁶ Luporini R., *Climate Change Litigation before International Human Rights Bodies*, cit., p.39.

¹⁵⁷ Ibidem.

¹⁵⁸ Ceretelli C., *Tutela dei diritti umani e lotta al cambiamento climatico*, cit., p.41.

to life was under a real and reasonably foreseeable threat. In addition, since it had already found violations of Articles 17 and 27, the Committee decided not to review the authors' arguments regarding children's rights under Article 24(1) of the Covenant.¹⁵⁹

Lastly, the Committee emphasized Australia's duty to provide an effective remedy, ensuring full reparation to the victims and preventing similar violations in the future. This includes granting appropriate compensation for the harm suffered, engaging in consultations with the affected communities, maintaining and strengthening protective measures, and monitoring, as well as reviewing, the effectiveness of those measures.¹⁶⁰

1.2 *Ioane Teitiota v. New Zealand*

Mr. Teitiota was born in the 1970s in Kiribati. At a young age, he moved to Tarawa, the main island and capital of Kiribati, where he later settled with his wife. In the 1990s, living conditions on Tarawa worsened significantly: the population started growing rapidly, cities became overcrowded and infrastructures, particularly for water and sanitation, remained inadequate, increasing the pressure on the island's already limited resources. This situation was exacerbated by the growing impacts of climate change, which intensified the scarcity of freshwater and caused coastal erosion as well as flooding.¹⁶¹

In 2007, faced with these worsening conditions, Mr. Teitiota and his wife moved to New Zealand on three-year work permits. While in Auckland, he worked in agriculture and greenhouse production, while his wife was employed in a nursing home. The couple had three children, none of whom qualified for New Zealand citizenship. When they discovered that their visas had expired, they sought legal advice but did not keep regular contact with their lawyer, missing key deadlines. In 2011, Mr. Teitiota was involved in a traffic accident that revealed his overstay and was arrested. At that point, it was too late to regularize his status or apply to stay on humanitarian grounds.¹⁶²

As journalist Kenneth Weiss later observed, what simply began as an attempt to obtain a visa extension, quickly became an international test case with global

¹⁵⁹ Ivi, p.42.

¹⁶⁰ Cordes-Holland O., *The Sinking of the Strait*, cit., p.40.

¹⁶¹ Foster M. and McAdam J., *Analysis of 'Imminence' in International Protection Claims: Teitiota v New Zealand and Beyond*, 71 International and Comparative Law Quarterly 975, UNSW Law Research, Paper No. 22-31, 2022.

¹⁶² Ibidem.

implications. Mr. Teitiotia's new lawyer reframed his situation as emblematic of a broader phenomenon, being individuals displaced by climate change, and sought to challenge existing international law. In this way, Mr. Teitiotia became an "unlikely international celebrity," representing the growing number of people from low-lying nations such as Kiribati who face displacement due to rising seas and environmental degradation.¹⁶³

In August 2012, Mr. Teitiotia's application for refugee or "protected person" status in New Zealand was rejected by the immigration authorities. He then appealed to the Immigration and Protection Tribunal, which reassessed his case in June 2013. In its decision, the Tribunal accepted that both Tarawa and Kiribati were suffering the severe and ongoing impacts of climate change, including slow-onset processes like sea level rise, which reduced access to freshwater and cultivable land, as well as rapid-onset events such as cyclones and floods causing extensive destruction and displacement. The Tribunal also acknowledged that resource scarcity, overcrowding, and environmental stress had generated conflict and violence, resulting in the death of some of the inhabitants. Therefore, it accepted that Mr. Teitiotia's decision to leave South Tarawa was clearly motivated by these worsening environmental threats.¹⁶⁴

Despite these findings, the Tribunal ruled that Mr. Teitiotia did not qualify as a refugee under the 1951 Convention on the Status of Refugees and New Zealand's Immigration Act 2009. Article 1 A (2) of the Convention defines a refugee as someone with a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion",¹⁶⁵ who is unable or unwilling to seek protection from their home country.¹⁶⁶ The Tribunal held that Mr. Teitiotia did not fall within the meaning of a refugee.¹⁶⁷ It concluded that persecution, in the context of the Convention, must result from human action or intent. Although the risks faced by Mr. Teitiotia were grave and indisputable, they stemmed from environmental changes rather than persecution by human agents. Consequently, rising sea levels, floods,

¹⁶³ Ivi, p.43.

¹⁶⁴ Galloway M., *Teitiotia v New Zealand, Climate Migration and Non-refoulement: A Case Study of Canada's Obligations under the Charter and the ICCPR*, 45:2 Dal LJ 385, 2022.

¹⁶⁵ UN General Assembly, *1951 Convention Relating to the Status of Refugees*, *United Nations*, Treaty Series, vol. 189, p. 152, art. 1 A (2), 1951.

¹⁶⁶ Ibidem.

¹⁶⁷ McAdam J., *Protecting people displaced by the impacts of climate change*, cit., p.21.

and other climate-related hazards could not be framed as persecution within the meaning of the two instruments.¹⁶⁸

The New Zealand Immigration and Protection Tribunal also observed that, according to what had been stated by Mr. Teitiotia himself, the dangers he faced in Kiribati were not unique to him but were shared by the wider population. Since risks that affect an entire population fall outside the protective scope of refugee law, this finding was decisive in rejecting his refugee claim.¹⁶⁹

Despite this shortcoming, the Tribunal acknowledged that the right to life is one of the rights most directly threatened by climate change and that it must be interpreted broadly, encompassing not only protection against arbitrary deprivation of life but also positive obligations to safeguard individuals from foreseeable environmental hazards.¹⁷⁰ In this context, as an alternative path, Mr. Teitiotia tried seeking recognition as a “protected person” under the ICCPR, invoking the principle of non-refoulement and New Zealand’s obligation not to deport individuals to places where substantial grounds exist for believing that they would be exposed to a violation of the right to life. Nevertheless, the Tribunal found that the evidence shared by Mr. Teitiotia did not demonstrate that the risks he faced in Kiribati were sufficiently immediate or severe to trigger New Zealand’s non-refoulement obligations under section 131 of the Immigration Act 2009. In its view, while climate change undeniably posed a serious threat to the inhabitants of Kiribati, the likelihood that Mr. Teitiotia’s life would be directly endangered upon return was not established to the required standard.¹⁷¹

After this decision, Mr. Teitiotia exhausted all possible avenues of domestic appeal. The New Zealand High Court dismissed his case in November 2013, followed by the Court of Appeal in May 2014, and finally the Supreme Court in July 2015. Following the final ruling, on 15 September 2015, he was detained and a deportation order was issued. On the same day, he submitted an individual complaint before the United Nations Human Rights Committee (HRC), upon having exhausted all domestic remedies. He requested a suspension of his deportation until the Committee had issued its decision. However, this

¹⁶⁸ Ivi, p.44.

¹⁶⁹ Galloway M., *Teitiotia v New Zealand, Climate Migration and Non-refoulement*, cit., p.44.

¹⁷⁰ Ibidem.

¹⁷¹ Ibidem.

demand was denied. Mr. Teitiota was removed to Kiribati on 23 September 2015, and his family joined him shortly afterward.¹⁷²

Before the Committee, Mr. Teitiota reiterated the argument that the worsening effects of climate change and rising sea levels had forced him to migrate from Kiribati to New Zealand. He reemphasized that the conditions in Kiribati were “increasingly unstable and precarious,” due to numerous factors, including severe saltwater intrusion into freshwater sources, extreme overcrowding, erosion of habitable land, and violent land disputes that had already caused several deaths. In fact, he also described the country as “an untenable and violent environment” for himself and his family.¹⁷³

Mr. Teitiota claimed that his deportation constituted a violation of Article 6(1) of the ICCPR, which protects against real or reasonably foreseeable threats to life. Specifically, he argued that the rising sea levels in Kiribati had created two distinct and life-threatening conditions: (a) the scarcity of habitable land, which had triggered violent conflicts endangering his safety; and (b) environmental degradation, including the contamination of freshwater supplies due to saltwater intrusion.¹⁷⁴

The Human Rights Committee noted that both the State party and the domestic Tribunal had found Mr. Teitiota credible and had accepted his evidence on the general situation in Kiribati. It also recognized that New Zealand’s legal framework already allows for climate impacts to be considered in international protection claims. Nonetheless, the Committee concluded that the evidence presented did not establish that Mr. Teitiota faced an “imminent, or likely, risk of arbitrary deprivation of life upon return to Kiribati”.¹⁷⁵

In examining Mr. Teitiota’s claim, the Human Rights Committee reiterated that the right to life under Article 6 of the ICCPR extends beyond mere physical survival. It includes the right of every individual to live with dignity, encompassing access to the basic economic and social conditions necessary for a decent standard of living. This understanding aligned with the ruling of the New Zealand Immigration and Protection Tribunal as well as with the approach taken by other several domestic and regional courts,

¹⁷² Foster M. and McAdam J., *Analysis of ‘Imminence’ in International Protection Claims*, cit., p.43.

¹⁷³ Ibidem.

¹⁷⁴ UN Human Rights Committee, *Ioane Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, 2020.

¹⁷⁵ McAdam J., *Protecting people displaced by the impacts of climate change*, cit., p.21.

which have interpreted the right to life as imposing a positive obligation on states to ensure “minimum living conditions compatible with human dignity” and to refrain from creating circumstances that undermine it. An example, as it will be later discussed, is the European Court of Human Rights which has similarly held that deporting individuals to places where they would face extreme destitution or inhuman living conditions could amount to inhuman or degrading treatment.¹⁷⁶

The Committee recognized these principles; nonetheless it maintained a particularly high evidentiary threshold. Regarding the lack of safe drinking water in Kiribati, it held that Mr. Teitiota had to demonstrate that access to freshwater was “inaccessible, insufficient or unsafe” to the point where it created a foreseeable threat of severe health impacts, limiting his ability to live with dignity or causing premature death. The same reasoning was applied to his claims on food insecurity. In fact, he needed to prove that crop failures and environmental degradation posed a “real and reasonably foreseeable risk” of extreme deprivation, hunger, or poverty serious enough to endanger his right to life.¹⁷⁷

Overall, the very high evidentiary threshold set by the Committee to apply the protections mentioned so far concerned three main elements: first, clear evidence that fresh water was inaccessible, insufficient, or unsafe, creating a foreseeable threat to health or survival; secondly, proof of a real and reasonably foreseeable risk of extreme deprivation, such as lack of food or severe precarity, that could threaten life or dignity; and lastly evidence of an imminent or established sea level rise causing a territory to become uninhabitable.¹⁷⁸

Based on the facts of the case, the Committee found that the conditions in Kiribati did not yet meet these criteria, estimating that the island’s submersion was still ten to fifteen years away.¹⁷⁹

Critics have noted that this very high threshold might have been appropriate had only one of the above elements been present. However, it was considered to be overly restrictive when a range of rights are impacted. In this case, a cumulative approach and assessment would have been more appropriate. Indeed, refugee law has long embraced

¹⁷⁶ Ivi, p.46.

¹⁷⁷ Galloway M., *Teitiota v New Zealand, Climate Migration and Non-refoulement*, cit., p.44.

¹⁷⁸ Ibidem.

¹⁷⁹ Ibidem.

the principle that a well-founded fear of persecution may stem either from a single grave danger or from multiple, lesser harms that, when considered together, amount to persecution. The UN High Commissioner for Refugees (UNHCR) has clarified that an applicant may face several adverse conditions, none independently rising to the level of persecution, but whose combined effects can reasonably justify a claim of persecution on “cumulative grounds”.¹⁸⁰ This reasoning has also been reflected in broader non-refoulement jurisprudence under international human rights law.

When comparing the Committee’s analysis with the domestic proceedings, it is possible to observe that the first body remained narrowly focused on Article 6 of the ICCPR, since this was the sole ground invoked by the applicant.¹⁸¹ By contrast, the Immigration and Protection Tribunal had also briefly considered Article 7 of the Covenant, which prohibits cruel, inhuman, or degrading treatment, noting that both Articles 6 and 7 are incorporated into New Zealand’s Immigration Act. Nevertheless, under this domestic framework, “ill-treatment” was interpreted as requiring an intentional act or omission by the state that exceeded normal economic difficulties or policy failure. Therefore, the Tribunal concluded that a government’s inability to address or provide an effective response to climate change or environmental crises could not, by itself, be considered as “treatment” under Article 7. Instead, such circumstances would fall within New Zealand’s humanitarian appeal provisions, which address cases based on compelling or compassionate grounds.¹⁸²

The *Teitiota* decision marked a pivotal moment in the evolution of climate-related human rights claims. On the one hand, it was the first time a quasi-judicial human rights treaty body explicitly recognized that “without robust national and international efforts”¹⁸³ the effects of climate change could expose individuals to life-threatening risks or to cruel, inhuman, or degrading treatment, thereby triggering the non-refoulement obligations of sending states.¹⁸⁴ The Committee also emphasized that states have a “continuing responsibility” to consider new and updated data on the effects of climate

¹⁸⁰ Foster M. and McAdam J., *Analysis of ‘Imminence’ in International Protection Claims*, cit., p.43.

¹⁸¹ Ibidem.

¹⁸² Galloway M., *Teitiota v New Zealand, Climate Migration and Non-refoulement*, cit., p.44.

¹⁸³ UN Human Rights Committee, *Ioane Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, para 9.11, p.12, 2020.

¹⁸⁴ Ibidem.

change and sea level rise in future cases.¹⁸⁵ This acknowledgment suggests that, moving forward, individuals living in other regions already affected by severe environmental degradation may be entitled to some form of protection and that similar claims could be successful, especially as the climate crisis worsens.¹⁸⁶

At the same time, the Committee's ruling built on well-established principles of international law and on longstanding scholarly arguments, therefore not representing a legal revolution. In fact, scholars had already started exploring the possibility of extending the principle of non-refoulement under human rights law to those displaced by climate change. In light of the specific circumstances of the case, the Committee concluded Mr. Teitiota's rights had not been violated, noting that New Zealand had provided him with an independent and individualized assessment of his need for protection and had properly evaluated the evidence regarding the risks he would face if returned to Kiribati.¹⁸⁷

The real significance of the decision lies in its doctrinal clarity and in the prospects it opens up for the future. The Committee's explicit recognition that the effects of climate change themselves constitute a bar to deportation, combined with its authoritative standing within the UN system, are likely to shape future jurisprudence and policymaking. As Foster and McAdam observe, "it opens the door for further use of the human rights system to exert pressure on the international community to address issues of climate change effectively".¹⁸⁸

In fact, this decision consolidated an emerging jurisprudence on the environment–life nexus, and, crucially, applies it to the context of climate-related displacement. Moreover, it shows that the ICCPR can serve as an interpretive guide in defining the breadth and scope of Charter rights in this evolving area of law, filling protection gaps left by traditional refugee law.¹⁸⁹

Despite Mr. Teitiota's removal being ultimately deemed lawful, the Committee reaffirmed that states may, in certain circumstances, be prohibited from deporting

¹⁸⁵ UN Human Rights Committee, *Ioane Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, para 9.14, p.12, 2020.

¹⁸⁶ McAdam J., *Protecting people displaced by the impacts of climate change*, cit., p.21.

¹⁸⁷ Ibidem.

¹⁸⁸ Foster M. and McAdam J., *Analysis of 'Imminence' in International Protection Claims*, cit., p.43.

¹⁸⁹ Galloway M., *Teitiota v New Zealand, Climate Migration and Non-refoulement*, cit., p.44.

individuals who face a real risk of irreparable harm to their right to life or to freedom from cruel, inhuman, or degrading treatment under the ICCPR and that they are obliged to adopt positive measures to protect life under Article 6(1). In doing so, the Committee reinforced the intrinsic link between the right to life, human dignity, and environmental protection, a connection first articulated in *Portillo Cáceres v. Paraguay* (2019).¹⁹⁰

In this case members of families farming in the Department of Canindeyú, District of Curuguaty, Paraguay, complained that the application of pesticides and the massive use of agro-toxics in the soy farms of the area had seriously impacted their living conditions, domestic economies, as well as their health. In particular, they argued that it had caused the poisoning of many people, including leading to the death of one of them, Mr. Portillo Cáceres, a 26-year-old farmer. Moreover, the contamination of water and aquifer resources had rendered it unusable for fishing, irrigating trees and plants, as it was destroying their crops, and watering the animals.¹⁹¹

After determining that no procedural barriers prevented it from examining the communication, the Human Rights Committee assessed the substance of each allegation presented by the complainants. Concerning the right to life, it observed that the extensive and well-documented aerial dispersal of toxic agrochemicals posed a foreseeable and serious threat to the complainants' lives, one which Paraguay should have prevented. In light of the poisoning already acknowledged in 2011 and the subsequent death of Mr. Portillo Cáceres, the Committee held that Article 6 of the ICCPR had been breached. This finding was particularly notable for being the first to invoke the newly adopted General Comment No. 36 on the right to life.¹⁹²

Furthermore, the Committee determined that Paraguay had violated art. 17, which protects private and family life, by failing to implement sufficient regulatory mechanisms to prevent unlawful polluting practices. In fact, more than eight years after the events, the lack of progress in criminal or administrative proceedings was clear and the absence of any form of compensation demonstrated that the State had not uphold its obligation to provide an effective remedy, as required by Article 2. Accordingly, the Committee

¹⁹⁰ Ivi, p.49.

¹⁹¹ Le Moli G., *The Human Rights Committee, Environmental Protection and the Right to Life*, *The International and Comparative Law Quarterly*, 69.3, 735–752, 2020.

¹⁹² Reeh G., *Human Rights and the Environment: The UN Human Rights Committee Affirms the Duty to Protect*, Blog of the European Journal of International Law, 2019.

stressed that Paraguay had to: (a) conduct an exhaustive and impartial investigation into the incidents; (b) impose appropriate sanctions on those responsible; (c) ensure full reparation, including adequate compensation, to the victims. It also underlined the obligation to adopt preventive measures to avoid recurrence.¹⁹³

In fact, it was noted that years earlier, in 2011, the District Court of Curuguaty had already found that the Ministry of the Environment, the National Plant and Health Service, had enabled severe harm to be inflicted upon the complainants, by neglecting their duties. Despite that ruling, soybean producers persisted in employing large quantities of agrochemicals without environmental authorization or safeguards. It was at this point that the complainants brought their case before the Human Rights Committee, claiming that, even after nearly a decade, Paraguay continued to neglect its protective obligations by allowing massive pesticide spraying near residential areas in violation of existing environmental standards.¹⁹⁴

1.3. Chiara Sacchi et al. v. Argentina

In September 2019, Greta Thunberg and 15 other children petitioned against Argentina, Brazil, France, Germany and Turkey before the United Nations Committee on the Rights of the Child (UNCRC).¹⁹⁵ They argued that these States had failed to take sufficient measures to address the climate crisis, despite long-standing and unequivocal scientific evidence of its consequences. In doing so, the petitioners claimed, the respondent States had intensified a global emergency that disproportionately harms children.¹⁹⁶

They also called on the Committee to recognize climate change as a full-scale crisis affecting children's rights. They requested that the respondent States released a declaration admitting that, through their actions and omissions, they had violated their fundamental rights to life, health, survival, and development, as well as disregarded the principle that the best interests of the child must be a primary consideration. For the

¹⁹³ Ivi, p.50.

¹⁹⁴ Le Moli G., *The Human Rights Committee, Environmental Protection and the Right to Life*, cit., p.50.

¹⁹⁵ Child Rights International Network, *Chiara Sacchi et al. v. Argentina*, CRIN Legal, 2022.

¹⁹⁶ Ibidem.

Indigenous and minority petitioners, the complaint also extended to violations of their cultural rights, threatened by environmental degradation and the loss of ancestral lands.¹⁹⁷

The petitioners described in detail the harm they were already experiencing, including worsening asthma due to smoke from wildfires, extreme heat and drought limiting their access to food and water, stronger storms and floods destroying homes, the spread of infectious diseases, rising sea levels endangering island communities, and growing psychological distress associated with climate anxiety.¹⁹⁸ In light of these conditions, they sought three forms of reparation: first, a declaration that the States had failed to fulfill their obligations; second, measures to end the ongoing violations; and third, a guarantee that similar violations would not be repeated. They further called on the respondent governments to revise their environmental laws, to act together internationally in reducing greenhouse gas emissions, and to ensure that children's voices are included in climate decision-making.¹⁹⁹

When the Committee issued its decision in October 2021, it acknowledged the urgency of the situation but found the complaint inadmissible. The UNCRC concluded that the petitioners had not met the procedural requirement of exhausting domestic remedies before turning to the international level. Nonetheless, the *Sacchi et al. v. Argentina et al.* case became a milestone in the field of climate and human rights litigation. In fact, it brought the Committee to clarify the three fundamental criteria for admissibility: (1) extraterritorial jurisdiction, (2) the definition of victimhood, and (3) the exhaustion of domestic remedies.²⁰⁰

A central issue in determining whether the *Sacchi et al. v. Argentina et al.* petition was admissible concerned the question of extraterritorial jurisdiction. The case required the Committee to consider whether States that are parties to the Convention could be held accountable for human rights violations occurring beyond their territorial borders. In this regard the petitioners argued that jurisdiction arose whenever a State's conduct foreseeably caused cross-border harm. Therefore, the continued actions and omissions of the five States, specifically their contribution to greenhouse gas emissions, had produced

¹⁹⁷ Suedi Y., *Litigating Climate Change before the Committee on the Rights of the Child in Sacchi v Argentina et al.: Breaking New Ground?*, Nordic Journal of Human Rights 40 (4): 549–67, 2022.

¹⁹⁸ Child Rights International Network, *Chiara Sacchi et al. v. Argentina*, cit., p.51.

¹⁹⁹ Ibidem.

²⁰⁰ Ibidem.

harmful effects that transcended national frontiers. In this context, they referred to the doctrine of “effects jurisdiction”, stating that the respondent governments could be held responsible for causing climate impacts abroad, seen that they retained effective control over activities generating emissions.²⁰¹

To reinforce this reasoning, the petitioners cited the 2017 Advisory Opinion of the Inter-American Court of Human Rights (IACtHR) on the Environment and Human Rights, which confirmed that, when the transboundary environmental damage affecting individuals outside a State’s jurisdiction is foreseeable, the State in question may held responsible for such harm.²⁰² However, this interpretation was strongly rejected by the respondent States. France argued that jurisdiction requires having actual control over the foreign territory where the victims reside; Argentina stressed the idea that extraterritorial responsibility should remain “highly restrictive” and denied the existence of any causal link between its conduct and the harms alleged; while Germany emphasized that the responsibility of climate change, as a collective and global phenomenon, cannot possibly be attributed to a single State.²⁰³

The second criterion required to prove that the petitioners were actually victims of human rights violations resulting from the respondent States’ inaction on climate change. In this regard, they argued that they had personally experienced the tangible and significant effects of climate change, which impacted their daily lives and therefore qualified as victims under the Convention.²⁰⁴

Despite these arguments, the Committee ultimately found the complaint inadmissible, focusing on the third procedural criterion: the exhaustion of domestic remedies, a requirement that can only be dismissed with substantial proof that domestic proceedings would be unreasonably prolonged. In fact, the sixteen children had not started any lawsuit before national courts in their respective countries, as they would have been ineffective, excessively onerous, and unlikely to lead to meaningful results.²⁰⁵ Appealing to the exemption, they also stated that the unique circumstances of their case meant that they would have to pursue five separate cases, in each respondent State party,

²⁰¹ Suedi Y., *Litigating Climate Change*, cit., p.52.

²⁰² Ibidem.

²⁰³ Ibidem.

²⁰⁴ Harvard Law Review, *Sacchi v. Argentina, Committee on the Rights of the Child Extends Jurisdiction over Transboundary Harms; Enshrines New Test*, Volume 135, Issue 7, 2022.

²⁰⁵ Ibidem.

each of which would take years. Additionally domestic litigation would have probably been dismissed on grounds of non-justiciability or sovereign immunity. They also mentioned the fact that fragmented national proceedings could have not produced the broad international impact achievable through the UNCRC mechanism.²⁰⁶

For the Committee, however, these arguments were not sufficient. It observed that the children had failed to provide sustained evidence that national courts would have denied them access to justice. While acknowledging the difficulties of succeeding in climate-related cases domestically, the Committee noted that there were few possible pathways that the petitioners could have pursued in their home countries. Consequently, the petition was declared inadmissible for failure to exhaust local remedies.²⁰⁷

Unsurprisingly, the Committee's decision was met with disappointment. The children's legal representatives, the human rights and environmental lawyers from Hausfeld and Earthjustice, stated that the ruling "delivered a rebuke to young people around the world who are demanding immediate action on the climate crisis".²⁰⁸ In their view, by declaring the case inadmissible, the Committee had effectively acknowledged that climate change constitutes a severe global emergency while simultaneously closing the UN's doors to those most affected by it.²⁰⁹

It is important to recognize, however, that it would have been difficult for the Committee to disregard the admissibility requirement concerning the exhaustion of domestic remedies. Doing so would have created two major problems: first, it could have undermined the Committee's established jurisprudence on this procedural criterion; and second, it might have weakened the institution's own legitimacy as a rule-based body within the international human rights system.²¹⁰

Nonetheless, the *Sacchi* decision marked a turning point: it clarified the boundaries of extraterritorial jurisdiction, refined the notion of victim status in climate-related human rights claims, and highlighted the procedural hurdles that future complainants must overcome to bring similar cases before international human rights bodies.²¹¹

²⁰⁶ Ivi, p.53.

²⁰⁷ Child Rights International Network, *Chiara Sacchi et al. v. Argentina*, cit., p.51.

²⁰⁸ Hausfeld, *Statement: UN Committee on the Rights of the Child Turns Its Back on Climate Change Petition from Greta Thunberg and Children from Around the World*, October 11, 2021.

²⁰⁹ Harvard Law Review, *Sacchi v. Argentina*, cit., p.53.

²¹⁰ Suedi Y., *Litigating Climate Change*, cit., p.52.

²¹¹ Ibidem.

2. Complaints before International Human Rights Bodies

Climate-related human rights complaints continue to face structural obstacles, yet the *Torres Strait Islanders* case shows that progress is possible. Among the recurring difficulties, three stand out in proceedings before international human rights bodies: the need to exhaust domestic remedies, the requirement of jurisdiction, and the demonstration of victim status. These challenges, though not unique to climate-related claims, become particularly relevant in this field.²¹²

The rule of exhaustion of domestic remedies is a well-established principle across all major universal and regional systems. As a general rule, applicants are required to first bring their claims before national courts before turning to an international forum. However, there are exceptions in cases where such remedies are ineffective or unreasonably delayed. The practice of the Human Rights Committee under Article 5(2)(b) of the Optional Protocol to the ICCPR adopted a relatively flexible approach, as claimants are not required to have exhausted all available procedures, but only those that carry a reasonable prospect of success. In climate litigation, complainants frequently rely on this margin of flexibility to argue that domestic courts are unlikely to provide meaningful results.²¹³

The *Sacchi et al. v. Argentina et al.* case illustrates the stricter application of this rule. The complaint was declared inadmissible because the applicants had not even attempted to bring proceedings at domestic level, merely claiming that it would be futile.²¹⁴ By contrast, in *Daniel Billy et al. v. Australia*, the Torres Strait Islanders carefully documented why no adequate remedies existed at home. They obtained a formal legal opinion confirming that Australia lacks judicial avenues to address violations of fundamental rights linked to climate change. This argument gained momentum especially because, unlike in multi-respondent cases, the Islanders had to challenge only the Australian system, which at the time presented peculiar difficulties: the absence of a national Bill of Rights, a government that was openly resistant to climate measures, and a judicial record in which both the High Court and an appellate court had denied any duty

²¹² Luporini R., *Climate Change Litigation before International Human Rights Bodies*, cit., p.39.

²¹³ Scissa C., *Environmental Migration at the International Level*, cit., p.37.

²¹⁴ Suedi Y., *Litigating Climate Change*, cit., p.52.

of care for regulating climate-related harm. Such unfavorable precedents raised the question whether insisting on domestic proceedings would have been pointless. International bodies have sometimes excused exhaustion where past rulings showed no chance of success, though other treaty monitors warn against treating a single negative precedent in an emerging area as determinative.²¹⁵

When compared to *Teitiota v. New Zealand*, the Torres Strait case reflects a more nuanced and contextual application of procedural rules. In fact, in *Teitiota*, the exhaustion of domestic remedies was uncontested, as the case had been examined by all New Zealand's courts. The Committee rejected the application on its merits and found that the applicant's return to Kiribati did not expose him to a real and immediate risk to life due to climate change. It concluded that, although the situation in Kiribati was deteriorating, it had not yet reached a threshold incompatible with Article 6 of the ICCPR.²¹⁶ This comparison shows the different aspects of admissibility with *Teitiota* highlighting the difficulties associated with meeting the substantive threshold of risk; *Sacchi* emphasizing the strictness of the requirement to exhaust domestic remedies; *Torres Strait Islanders* representing a middle path where both procedural and substantive obstacles have been partially overcome.²¹⁷

Moving beyond the criteria of exhaustion of domestic remedies, jurisdiction can be problematic in transboundary or multi-State climate disputes, where applicants must prove that a State exercised extraterritorial jurisdiction in relation to the alleged human right harm. In this regard, in *Sacchi*, the applicants argued that emissions of multiple respondent States had contributed to global climate harm affecting them elsewhere. However, the Committee did not find a sufficiently strong jurisdictional link between each respondent State and the applicants' alleged injuries.²¹⁸ This outcome underscores how difficult it remains to establish responsibility in cases involving widespread, cross-border emissions, an obstacle that Torres Strait avoided thanks to its territorial and mono-State character.²¹⁹ On the other hand, in *Torres Strait Islanders* jurisdiction under Article 1 of the Optional Protocol was uncontroversial, as the authors were physically present

²¹⁵ Luporini R., *Climate Change Litigation before International Human Rights Bodies*, cit., p.39.

²¹⁶ Ceretelli C., *Tutela dei diritti umani e lotta al cambiamento climatico*, cit., p.41.

²¹⁷ Noorda A.Y., *Climate Change, Disasters and People on the Move*, cit., p.9.

²¹⁸ Suedi Y., *Litigating Climate Change*, cit., p.52.

²¹⁹ Noorda A.Y., *Climate Change, Disasters and People on the Move*, cit., p.9.

within Australia's jurisdiction, and the alleged violations fell within the scope of the ICCPR.²²⁰

More complex was the requirement of victim status. Climate cases often anticipate future harm and seek preventive protection, raising doubts about whether claimants are "directly and personally" affected. In line with its earlier decision in *Teitiota v. New Zealand*, the Committee confirmed that the Torres Strait Islands were at risk of flooding and that its population as well was facing concrete risks. This conclusion was sufficient to admit the complaint, though a stricter test was applied to the merits.²²¹

Moreover, the Committee acknowledged that, under General Comment No. 36 (2018), the right expands beyond mere survival and encompasses dignified living conditions, as established also by Article 6 of the Covenant (right to life). Nevertheless, in *Torres Strait Islanders* it found no violation, reasoning that the applicants had not proved sufficiently concrete health impacts or an imminent and foreseeable threat to life. In the same decision, the Committee indicated that despite Australia's series of actions, such as the construction of new seawalls on the four islands that are expected to be completed by 2023, additional timely and appropriate measures were required to avert a risk to the Islanders' lives, since without robust national and international efforts, the effects of climate change may expose individuals to a violation of their right to life under the Covenant. Nonetheless, the outcome suggests that future litigants may find greater opportunities by invoking other Covenant rights, such as cultural rights under Article 27 (right to culture).²²²

Indeed, Article 27 proved decisive, specifically thanks to its collective and intergenerational dimension. The Committee found that Australia had violated the Islanders' collective ability to maintain their traditional lifestyle, pass their culture to future generations, and continue using land and sea resources. These finding opens up the possibility for indigenous and minority communities to increasingly rely on cultural rights in the future when challenging inadequate climate policies.²²³

²²⁰ Ivi, p.56.

²²¹ Galloway M., *Teitiota v New Zealand, Climate Migration and Non-refoulement*, cit., p.44.

²²² Feria-Tinta M., *Torres Strait Islanders: United Nations Human Rights Committee Delivers Ground-Breaking Decision on Climate Change Impacts on Human Rights*, Blog of the European Journal of International Law, 2022.

²²³ Ibidem.

Similarly, in *Portillo Cáceres et al. v. Paraguay*, the Committee found violations of the right to life and private life due to environmental pollution caused by agrochemicals. Although not a climate migration case, Portillo Cáceres confirmed States' positive obligations to prevent foreseeable environmental harm affecting vulnerable communities, by reinforcing the link between environmental degradation and the enjoyment of Covenant rights.²²⁴

Moreover, in the *Torres Strait Islanders* case, in its remedial section, the Committee called on Australia to ensure full reparation, which implied adequate compensation, consultation with affected communities, and effective adaptation measures subject to monitoring. It required Australia to report back within 180 days. Unlike judgments of the European Court of Human Rights, the Committee's Views are not formally binding, and their implementation depends largely on State willingness. However, an important aspect to note is that complaints can trigger indirect impacts, even before the final opinion is delivered. This case received significant international attention, to the point where it caused domestic political responses. In fact, already during the proceedings, Australia had announced an investment of AUD 25 million in adaptation measures, and shortly after the decision, the new Minister for Climate Change and Energy visited the Islands, meeting with applicants and publicly recognizing the gravity of the threat they face.²²⁵

This combination of direct and indirect effects illustrates how climate litigation before human rights bodies may work. Even if remedies are limited, cases can raise awareness, shift political discourse, and mobilize resources. The comparison between *Daniel Billy v. Australia*, *Ioane Teitiota v. New Zealand*, *Chiara Sacchi et Al. v. Argentina* and *Portillo Cáceres v. Paraguay* showed an emerging evolution that goes from a focus on individual displacement in *Teitiota*, through the jurisdictional complexities of multi-State claims in *Sacchi*, to the recognition of collective cultural harm in *Torres Strait Islanders*²²⁶. Each case marks a different stage in the human rights system's struggle to adapt its doctrines to the climate crisis. The trajectory suggests a gradual widening of admissibility grounds and interpretive openness, pointing toward a more integrated

²²⁴ Harvard Law Review, *Sacchi v. Argentina*, cit., p.53.

²²⁵ Feria-Tinta M., *Torres Strait Islanders*, cit., p.57.

²²⁶ United Nations, *Charter of the United Nations*, 1 UNTS XVI, art. 92-96, 24 October 1945.

approach where procedural rigor does not push aside the urgent need for substantive protection against climate impacts.²²⁷

3. The Role of the International Court of Justice

The ICJ is the main judicial organ and legal advisory body of the UN. It was established with the aim of solving disputes peacefully through international law and to issue advisory opinions on legal questions submitted to it. Requests before the ICJ can be presented only by the UN General Assembly, other UN organs or specialized UN agencies, on topics specifically concerning their mandates. In this regard, States do not have any unilateral authority.²²⁸

Advisory opinions constitute an authoritative interpretation of international law and often play a key role in the progressive development and clarification of legal principles, particularly in evolving areas such as environmental and human rights law. Even though they are generally non-binding, they have recently become a key source of international law thanks to their increasing legal and practice influence. In fact, they are flexible tools useful when developing new instruments or policies in response to changing practices. This characteristic allows them to be more accessible and inclusive compared to other types of proceedings, such as the contentious jurisdiction. It also provides the Court with the opportunity of developing innovative mechanisms to address the specific needs of States or other entities, facilitating their effective participation.²²⁹ The Court itself has used the expression “relatively schematic” to describe its advisory procedure, implying that it has broad discretion with regard to these specific types of requests.²³⁰ Moreover, choosing the advisory route, instead of engaging in contentious litigation, has a number of benefits. Not only it is usually less antagonistic, but it also entails fewer procedural hurdles.²³¹

²²⁷ Noorda A.Y., *Climate Change, Disasters and People on the Move*, cit., p.9.

²²⁸ Wewerinke-Singh M., Garg A. and Hartmann J., *The advisory proceedings on climate change before the International Court of Justice*, *Questions of International Law*, 102, 23-43, 2023.

²²⁹ Ibidem.

²³⁰ British Institute of International and Comparative Law, *Promoting Climate Justice through International Law: Climate Litigation & Climate Advisory Opinions*, 2023.

²³¹ Ibidem.

Until this very year, the ICJ had never been directly involved in addressing a case explicitly focused on climate change. Throughout its operation there have been numerous attempts, none being successful or sufficiently impactful. However, the Court has long contributed to shaping international environmental law. There are, in fact, a considerable number of environmental disputes that have been adjudicated, with advisory opinions relevant to the field, including the *Corfu Channel*, the *Gabcikovo-Nagymaros*, the *Nuclear Weapons*, the *Pulp Mills*, and the *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*.²³²

The first case concerned a dispute between Albania and the United Kingdom, with regard to Albania's failure to notify the counterpart of mines in its waters. Although it did not directly focus on environmental issues, in 1949 the ICJ found that "every state has an obligation not to allow knowingly its territory to be used for acts contrary to the rights of other states".²³³ This principle is considered to be closely linked to international environmental concerns as it recognizes the legal implications deriving from the interdependence of states.²³⁴ In fact, this statement also set the ground for the formulation of Principle 21 of the Stockholm Declaration and Action Plan for the Human Environment²³⁵ which affirms that, in accordance with the U.N. Charter and established norms of international law, states have the sovereign right to exploit their own natural resources through their environmental policies. Nonetheless, they also carry the obligation to ensure that activities under their jurisdiction or control do not cause environmental damage to other states or to areas beyond the limits of national jurisdiction.²³⁶

The same principle was subsequently restated in the *Legality of the Threat or Use of Nuclear Weapons* advisory opinion, where the Court decided that, while the threat or use of nuclear weapons would generally be contrary to international humanitarian law, it

²³² Nguyen et Al., *Assessing the Role of International Judicial Advisory Opinions in the Evolution of International Environmental Law in Response to Climate Change*, Vol.10, Issue 1, University of Bologna Law Review, 2025.

²³³ International Court of Justice, *Corfu Channel case*, p.22, Judgment of April 9th, 1949.

²³⁴ Magraw D.B., *International Law and the Environment*, Proceedings of the SinoAmerican Conference on Environmental Law, Colorado Law Scholarly Commons, 1987.

²³⁵ Nguyen et Al., *Assessing the Role of International Judicial Advisory Opinions in the Evolution of International Environmental Law in Response to Climate Change*, cit., p.60.

²³⁶ United Nations, *Report of the United Nations Conference on the Human Environment*, Ch. I, p.5, Stockholm, 1972.

cannot be concluded whether or not such a threat or use of nuclear weapons would be lawful in extreme circumstances where the very survival of a state would be at stake.²³⁷ This opinion is particularly relevant in the field of international environmental law, as the ICJ clarified the significance of environment, stating that “it is not an abstraction but represents the living space, the quality of life, and the health of human beings, including generations unborn”.²³⁸ In this context, it underscored the need to incorporate environmental considerations with regard to military objectives. In fact, according to the Rio Declaration and the Additional Protocol I to the Geneva Convention, States have a general obligation to ensure that their actions, both within their territories and under their control, do not negatively impact the environment of other states or areas beyond their national jurisdiction.²³⁹

In the *Pulp Mills* case, which addressed the dispute between Argentina and Uruguay concerning Uruguay’s alleged breach of the 1975 Statute of the River Uruguay in relation to the planned construction and authorization of two pulp mills along the river, the ICJ affirmed the obligation to conduct an Environmental Impact Assessment (E.I.A.). This requirement reflects the state’s responsibility to foresee, evaluate, and mitigate potential environmental and climate-related risks arising from its activities that may result in adverse transboundary effects, particularly with respect to shared natural resources. In fact, the principle of due diligence obliges states to take proactive measures to prevent significant environmental harm, including damage to the global climate system. In this sense, this obligation entails assessing whether a state has failed or not to act with the necessary care to avert such harm.²⁴⁰

Building on this precedent, the ICJ reaffirmed the duty of due diligence in the *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* case, reemphasizing that states must assess and anticipate possible environmental harm before undertaking any activity with potential transboundary effects and if such risk exists, then it is obliged to conduct an E.I.A.²⁴¹

²³⁷ Wewerinke-Singh M., Garg A. and Hartmann J., *The advisory proceedings on climate change before the International Court of Justice*, cit. p.59.

²³⁸ International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, p. 241, 1996.

²³⁹ Ibidem.

²⁴⁰ Ibidem.

²⁴¹ Nguyen et Al., *Assessing the Role of International Judicial Advisory Opinions*, cit., p.60.

Consistent with this approach, the *Gabcikovo-Nagymaros Project* case represents another key example. It concerned a dispute over the construction of two dams and power plants on the Danube River: one at Gabčíkovo in Czechoslovak territory and the other at Nagymaros in Hungarian territory. The project, which was to take the form of a ‘joint investment’, was essentially aimed at the production of hydroelectricity, the improvement of navigation on the Danube and the protection of the areas along the banks against flooding. This ruling was particularly relevant as it was among the first ones to introduce the concept of “sustainable development”, addressing the balance between economic development and environmental protection. In particular, the ICJ emphasized that once environmental damage occurs, it can be irreversible and lasting. It is therefore necessary to prevent it through careful consideration and adequate measures.²⁴² It also acknowledged the fact that, in history, economic development has often hindered natural systems, leading to significantly negative environmental impacts. Additionally, the ICJ urged states to comply with the evolving environmental standards and norms, not only when undertaking new projects, but also in the continuation of existing activities. In this context, the Court reiterated one of the foundational principles of the concept of sustainable development itself, which is “reconciling economic development with the protection of the environment”.²⁴³

By the 2010s, the contributions made by these cases to the development of environmental protection and climate change jurisprudence were insufficient and the need for an ICJ Advisory Opinion, specifically addressing this issue, became increasingly pressing. The initiative to seek such an opinion first emerged within diplomatic circles in 2011, when President Johnson Toribiong of the Republic of Palau urged United Nations member states to request that the Court clarify “what the international rule of law means in the context of climate change”. This initiative was subsequently joined by over 30 countries worldwide, from across Africa, South America, Asia and Europe, as well as by the group of island Ambassadors known as the Ambassadors for Responsibility on Climate Change group, uniting their voices to President Toribiong’s.²⁴⁴

²⁴² Ivi, p.61.

²⁴³ Ibidem.

²⁴⁴ Beck, S. and Burleson E., *Inside the System, Outside the Box: Palau’s Pursuit of Climate Justice and Security at the United Nations*, Transnational Environmental Law, 3(1), pp. 17–29. 2014.

The questions the Court was asked to consider concerned the obligations of states to ensure that activities under their jurisdiction do not cause, or substantially contribute to, damages to another state or states. This was particularly emphasized in relation to the emission of GHGs. As a matter of fact, Palau's original goal was to establish whether existing norms of international law were applicable to the emission of GHGs and prohibited transboundary harm. If so, it would have constituted a norm from which no country could opt out, becoming a baseline for negotiations at UNFCCC and would have inevitably had an impact also on national courts and legislatures.²⁴⁵

The argument Palau made was that anthropogenic GHGs act as a pollutant, capable of causing damages across borders. The origins of the damage may be widespread, with a long and complex chain of causes, but they are now becoming more traceable and can therefore be addressed. The consequences are also clear, and they are likely to result in serious harm, potentially leading to the collapse or disappearance of some existing states.²⁴⁶

From the very beginning it was evident that taking such a request to the ICJ would have provoked significant opposition, given its ambition and the fact that it reopened the debate on justice and law on environmental issues. On the other hand, it also represented an important opportunity to make a meaningful impact.²⁴⁷

As more countries joined the campaign, the initiative grew into a significant movement. Some of the participating nations were large and highly vulnerable to climate change, while others were motivated by a strong commitment to addressing the crisis and reinforcing international law. However, even this remarkable level of support was not sufficient to guarantee its success.

All efforts made to take this request forward were hindered by the United States who pressed for ending the campaign, using all its diplomatic power. The very government that had once condemned inaction on climate and security as "pathetic", later pressed Palau and other states to withdraw the case.

Subsequently, throughout the years, the idea of requesting an advisory opinion refloated numerous times, carried forward by various States, such as the Marshall Islands

²⁴⁵ Ivi, p.62.

²⁴⁶ Ibidem.

²⁴⁷ Wewerinke-Singh M., Garg A. and Hartmann J., *The advisory proceedings on climate change before the International Court of Justice*, cit. p.59.

and Bangladesh, as well as by several civil society groups. Yet, even these attempts proved unsuccessful. In most cases, China's strong diplomatic opposition, aimed at blocking any discussion of the issue within UN forums, significantly hindering progress toward securing an ICJ ruling.²⁴⁸

It ultimately achieved its goal in 2019, when the initiative gained new momentum with the formation of Pacific Islands Students Fighting Climate Change (PISFCC), an organization of Pacific youth who began campaigning leaders at the Pacific Island Forum to push for an advisory opinion. Thanks to their activism, their proposal was adopted and championed by the Republic of Vanuatu, which, in early 2022, declared a climate emergency. The Prime Minister stated, "we are in danger now, not just in the future ... Vanuatu's responsibility is to push responsible nations to match action to the size and urgency of the crisis ... the use of the term emergency is a way of signaling the need to go beyond reform as usual".²⁴⁹

Due to the extremely difficult situation the Country was facing, the government of Vanuatu sought launching an international effort to convince other nations to support a United Nations General Assembly resolution requesting an advisory opinion from the ICJ. Through extensive groundwork and coordination, Vanuatu was able of bringing together a "Core Group of States" to foster collaboration and reshape the draft resolution.²⁵⁰

The draft resolution 77/276 was adopted by consensus among all 193 UN Member States in 2023, meaning that they had all agreed on the matter without the need for a formal vote, and in April, the UN Secretary-General transmitted the request to the ICJ. The questions brought before the Court were: "Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm

²⁴⁸ Ivi, p.63.

²⁴⁹ Farran S., *Vanuatu Leads Drive to Secure an Opinion from the International Court of Justice on State Responsibilities to Turn Words into Action on Climate Change*, University of Queensland Law Journal, Vol. 42, Issue 3, 411-432, 2023.

²⁵⁰ Ibidem.

to the environment and the duty to protect and preserve the marine environment: (1) what are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?; (2) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to: (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?; and (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?”.²⁵¹

These questions highlight several important aspects, starting from the inclusion of references to human rights. The first two sub-questions ask the Court to identify and interpret the substantive duties of states regarding conduct that has caused serious harm to the environment, as well as the resulting accountability mechanisms under international law. In particular, the first sub-question aims at clarifying the obligations of states under various branches of international law in relation to climate change, while the second one concerns the legal consequences that arise when states fail to meet these obligations.

Importantly, the resolution distinguishes between two groups: first, the small island developing states and other nations that are particularly affected or injured by the impacts of climate change; and second, present and future generations. This dual focus gives the resolution both an inter-state dimension and a human dimension, extending its reach beyond states to encompass individuals and communities.²⁵²

The questions also emphasize that legal consequences may stem not only from a state's active contribution to environmental harm but equally from its failure to act in accordance with its international obligations. Moreover, the reference to “specially affected” or “injured” states highlights the disproportionate burdens faced by climate-vulnerable countries, inviting the Court to consider the unequal distribution of climate

²⁵¹ Wewerinke-Singh M., Garg A. and Hartmann J., *The advisory proceedings on climate change before the International Court of Justice*, cit. p.59.

²⁵² British Institute of International and Comparative Law, *Promoting Climate Justice through International Law*, cit., p.40.

impacts in its opinion. In doing so, it underscores the legal entitlements of these states under the general law of state responsibility.

Finally, by shifting part of the focus from obligations between states to obligations owed to peoples and individuals, the resolution ensures recognition of the rights and interests of those most affected by climate change, particularly those in vulnerable situations today and in the generations to come.²⁵³

The Court, in its opinion delivered on the 23rd of July 2025, described climate change as an “urgent and existential threat” to humanity, that has “severe and far-reaching” consequences both on natural ecosystems and human societies. Moreover, referring to factual and scientific evidence, the Court affirmed that GHG emissions are “unequivocally caused by human activities”.²⁵⁴

It also recognized the intrinsic connection between human rights and environmental protection, stating that every individual has the right to a “clean, healthy and sustainable environment,” which is a necessary precondition for the enjoyment of other fundamental rights such as life, health, food, water, and housing.²⁵⁵ It also stressed that this right is firmly rooted in international, regional, and domestic legal frameworks, as demonstrated by its recognition in United Nations resolutions, human-rights treaties, and over one hundred national constitutions. By establishing this link, the Court made clear that states’ obligations to protect human rights are closely dependent on their ability to safeguard the environment.²⁵⁶

The ICJ also held that states that fail to comply with their climate obligations commit “an internationally wrongful act.” Judge Yuji Iwasawa, the Court’s President, underscored that failing to adopt the necessary measures to protect the climate and the environment constitutes a breach of international law, which may then result in legal consequences. Because any conduct, whether by action or omission, of a state organ is attributable to the state itself, the Court specified that a state’s failure to regulate greenhouse gas emissions, including through fossil-fuel production, consumption, licensing, or subsidies, amounts to such an internationally wrongful act.²⁵⁷ The Court also

²⁵³ Ivi, p.65

²⁵⁴ Dugal M., *ICJ Advisory Opinion: The World’s Top Court Has Spoken Unequivocally on States’ Climate Change Obligations*, Earth.Org, 2025.

²⁵⁵ Ibidem.

²⁵⁶ Ibidem.

²⁵⁷ Ibidem.

clarified the legal consequences arising from these breaches. If a sufficiently direct causal link between the wrongful act and the harm is established, the responsible state must act to fulfil the breached obligation and, where applicable, cease the harmful conduct, provide assurances of non-repetition, and offer full reparation. This may include restitution, compensation, and/or satisfaction to the injured parties.²⁵⁸

Advisory opinions are not directly enforceable under Article 59 of the ICJ and therefore they are not formally binding. Nonetheless they carry significant legal and moral authority. In fact, they play a crucial role in shaping and clarifying international law by interpreting states' legal duties and influencing both international and domestic practice. Historically, their reasoning has influenced state behavior, inspired legislative reforms, and guided national courts by crystallizing existing norms and helping to solidify emerging rules of customary international law. For these reasons, they are among the most persuasive sources of international legal interpretation.²⁵⁹

In this climate advisory opinion, the ICJ affirmed that states have binding legal duties, including a due-diligence obligation to regulate private actors as well as to prevent, mitigate, and remedy climate-related harm. These obligations derive from both treaty law, such as the UNFCCC and the Paris Agreement, and from customary international law, which includes the right to a clean, healthy, and sustainable environment.²⁶⁰ This represents a landmark development in the evolution of international environmental law, formally establishing the link between climate change, state responsibility and human rights. It offers a new standard for states' conduct under international law, crystallizing emerging norms, clarifying the due-diligence obligations, and setting the stage for future climate litigation. Its true impact will depend on the willingness of states and international institutions to translate its principles into concrete action. Nonetheless, it stands as a historic milestone, both a legal and moral compass for global climate governance.²⁶¹

²⁵⁸ Ivi, p.66.

²⁵⁹ Nguyen et Al., *Assessing the Role of International Judicial Advisory Opinions*, cit., p.60.

²⁶⁰ Ibidem.

²⁶¹ Dugal M., *ICJ Advisory Opinion: The World's Top Court Has Spoken Unequivocally on States' Climate Change Obligations*, cit., p.66.

CHAPTER III

Regional and National Case Laws

SUMMARY: 1. Regional Protection Mechanisms (IACtHR and the European System). – 2. National Case Studies (France and Italy). – 3. Takeaways from Regional and National Jurisprudence.

1. Regional Protection Mechanisms

In this chapter, the analysis shifts from an international perspective to the regional and national level. As discussed in previous chapters, the existing international framework has so far proven to be insufficient to effectively respond to the needs of climate and environmental migrants.

Where protection gaps persist, regional and domestic actors often have an opportunity to step in and address them. Regionally, the most prominent judicial bodies on environmental displacement have been the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR).

In this regard, Chapter III will first explore the judicial developments of the IACtHR, with particular attention to its most recent advisory opinion on climate change and human rights, which was delivered on July 3rd, 2025. Secondly, it will examine the ECtHR and its role in adjudicating cases concerning climate-induced displacement. Specifically, the analysis will be focused on the different grounds of protection under relevant treaties and instruments, such as the European Convention on Human Rights.

Lastly, this work will move to the national level, with particular attention to the case studies of Italy and France. The normative frameworks adopted by these States will be examined and compared, in order to evaluate their effectiveness in addressing the challenges posed by environmental displacement.

1.1. The Inter-American Court of Human Rights

The Inter-American Court of Human Rights is an autonomous organ of the Organization of the American States (OAS), working as a human rights tribunal with

jurisdiction over the American Convention on Human Rights (ACHR)²⁶² and the other treaties adopted within the Inter-American system. Among its key functions is the protection, promotion and monitoring of human rights in the 35 independent countries of the Americas, through both contentious and advisory jurisdiction.²⁶³ In this sense, the Court has the potential to play a leading role in the understanding of States' obligations in the context of the current climate emergency, as well as in clarifying the legal consequences deriving from breaching those obligations.²⁶⁴

Compared to other systems, including the European system, which will be further discussed in the next section of this chapter, the Inter-American framework has a more robust level of protection against refoulement and migration.²⁶⁵ The main legal basis in this regard is art. 22(8) of the ACHR, establishing that “in no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions”.²⁶⁶ This principle was then reaffirmed in art. 13 of the 1985 Inter-American Convention to Prevent and Punish Torture, which provides that “extradition shall not be granted nor shall the person sought be returned when there are substantial grounds to believe that his life is in danger, that he will be subjected to torture or to cruel, inhuman or degrading treatment, or that he will be tried by special or ad-hoc courts in the requesting State”.²⁶⁷

The Inter-American system was also the first regional system and the first international forum to address climate emergency as a human rights issue. *Sheila Watt-Cloutier et al. v. United States* (the Inuit case) represents a landmark case, brought before the Inter-American Commission on Human Rights by the Inuit population of the Arctic

²⁶² The American Convention entered into force in 1978. It is ratified by 25 State members of the Organization of American States. Neither the United States nor Canada are parties to the American Convention.

²⁶³ Feria-Tinta M., *An advisory opinion on climate emergency and human rights before the Inter-American Court of Human Rights*, Questions of International Law, 2023.

²⁶⁴ Riemer L. and Scheid L., *Leading the Way: The IACtHR's Advisory Opinion on Human Rights and Climate Change*, VerfBlog, 2024.

²⁶⁵ Iyer M., *Environmental Migration In Regional Human Rights Courts: A Lifeboat from the "Sinking Vessel"*, Tennessee Law Review, Vol. 91, No. 2, Duke Law School Public Law & Legal Theory Series No. 2023-58, 2023.

²⁶⁶ Organization of American States, *American Convention on Human Rights*, art. 22(8), O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, 1969.

²⁶⁷ Organization of American States, *Inter-American Convention to Prevent and Punish Torture*, art. 13, O.A.S.T. No. 67, 1985.

regions of the United States and Canada,²⁶⁸ claiming that “nowhere on Earth has global warming had a more severe impact than the Arctic”²⁶⁹ and denouncing a “cataclysmic impact on the Inuit”.²⁷⁰ They alleged that the USA had failed to adequately regulate their greenhouse gas emissions (GHG), damaging the Arctic ecosystem and violating the human rights of its inhabitants, as protected under the American Declaration of the Rights and Duties of Man.²⁷¹ In 2005, the case was dismissed by both the Inter-American Commission and the IACtHR with the reasoning that the information provided were not sufficient to determine whether the alleged facts constituted a violation of the rights protected under the American Declaration. Nonetheless, over the years the topic has been brought back before the IACtHR through the submission of numerous advisory requests.²⁷²

Firstly, in 2017, the Court issued the Advisory Opinion on the Environment and Human Rights (Advisory Opinion 23).²⁷³ As of today, this opinion is considered to be one of the most significant rulings on environmental law and human rights ever issued by an international court, as it solidified the connection between those two areas of international law that had been historically treated separately.²⁷⁴ It built on the Court’s previous jurisprudence, which had already emphasized the positive and negative obligations of States under articles 1(1) and 4 of the ACHR. The negative obligation entails that no person may be deprived of their life arbitrarily, while the positive obligation requires States to take all appropriate measures to protect and preserve the right to life.²⁷⁵ This approach has also been reiterated in the General Comment No. 36 of the Human Rights Committee, on art. 6 (right to life) of the ICCPR.²⁷⁶

²⁶⁸ Ceretelli C., *Tutela dei diritti umani e lotta al cambiamento climatico*, cit., p.41.

²⁶⁹ Inter-American Commission on Human Rights, *Petition Seeking Relief from Violations resulting from Global Warming caused by Acts and Omissions of the United States*, p.1, 2005.

²⁷⁰ Ibidem.

²⁷¹ Ceretelli C., *Tutela dei diritti umani e lotta al cambiamento climatico*, cit., p.41.

²⁷² Kahl V., *Warming Up: The Chilean and Colombian Request for an Inter-American Advisory Opinion on the Climate Emergency and Human Rights*, VerfBlog, 2023.

²⁷³ Inter-American Court of Human Rights, *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)*, Advisory Opinion, OC-23/18, Ser A No 23, 2017.

²⁷⁴ Feria-Tinta M., *An advisory opinion on climate emergency and human rights before the Inter-American Court of Human Rights*, cit., p.69.

²⁷⁵ Ibidem.

²⁷⁶ Human Rights Committee, *General Comment No 36 on article 6 of the International Covenant on Civil and Political Rights on the right to life*, UN Doc CCPR/C/GC/36, 2018.

Moreover, in this opinion, the Court considered for the first time climate change as a possible form of transboundary harm capable of causing human rights violations, linking the right to life to environmental degradation. Two key aspects further elaborate on this connection. First, the Court addressed the concept of external jurisdiction, clarifying that “extraterritorial conducts may encompass a State’s activities that cause effects outside its territory”.²⁷⁷ Therefore, cross-border human rights claims concerning conducts such as transboundary pollution and ecological damage can be challenged within the Inter-American system.²⁷⁸

Additionally, the Court reiterated that States “must ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of their jurisdiction, and that States are obliged to use all available means to avoid activities in their territory, or in any area under their jurisdiction, causing significant damage to the environment of another State”.²⁷⁹

The second fundamental feature concerns the concept of effective control. In this regard, the Court stated that, in case of transboundary harm, a State could be held responsible for damages caused to persons outside its territory as a result of its failure to comply with international environmental obligations within its territory or under its control or authority. Should such harm occur, the Court affirmed that the individuals affected are considered under the jurisdiction of the State of origin for the purposes of international responsibility.²⁸⁰ This reasoning shifts attention toward the source of harm and the State’s capacity to regulate the activities that generate it, rather than on the victims, opening a path for interpreting the American Convention in a way that may be relevant to climate-related degradation.²⁸¹

Building on this precedent, in 2023 the Republic of Chile and the Republic of Colombia, as State parties to the ACHR, jointly filed a request for an Advisory Opinion

²⁷⁷ Inter-American Court of Human Rights, *The Environment and Human Rights*, para 95, cit., p.70.

²⁷⁸ Feria-Tinta M., *An advisory opinion on climate emergency and human rights before the Inter-American Court of Human Rights*, cit., p.69.

²⁷⁹ Inter-American Court of Human Rights, *The Environment and Human Rights*, para 97, cit., p.70.

²⁸⁰ Feria-Tinta M., *An advisory opinion on climate emergency and human rights before the Inter-American Court of Human Rights*, cit., p.69.

²⁸¹ Ibidem.

on the Climate Emergency and Human Rights before the IACtHR.²⁸² The request notes that migration and displacement are closely linked to the negative impacts of climate change, underscoring the need for an intersectional approach to be adopted to address the issue.²⁸³

The aim was to emphasize the daily struggles both countries face due to climate-induced harm (floods, droughts, fires, etc.), while highlighting that not all countries equally bear the burden of climate change. In fact, specific States and communities, because of their particular geographic, climatic and socioeconomic conditions, are disproportionately affected by climate change, especially if compared to their own contribution to global warming.²⁸⁴

Although Chile and Colombia acknowledged the significant developments reflected in the Advisory Opinion No. 23, they also stressed the need to further define “the grounds for, and the scope of, the human rights affected by the climate emergency, as well as the obligations of States to urgently address its causes and consequences, while taking into account considerations of equity, justice, prudence and sustainability”.²⁸⁵

Therefore, the request brought before the Court was “to clarify the scope of State obligations, in their individual and collective dimension, in order to respond to the climate emergency within the framework of international human rights law, paying special attention to the differentiated impacts of this emergency on individuals from diverse regions and population groups, as well as on nature and on human survival on our planet”.²⁸⁶

This broad question was articulated into several themes, with the first concerning the obligation to guarantee human rights in the context of the climate emergency, with particular reference to the right to a healthy environment, which is protected by art.11 of the 1988 Additional Protocol to the American Convention on Human Rights in the Area

²⁸² *Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile*, 2023.

²⁸³ Kahl V., *Warming Up: The Chilean and Colombian Request for an Inter-American Advisory Opinion on the Climate Emergency and Human Right*, cit., p.70.

²⁸⁴ Ibidem.

²⁸⁵ *Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile*, p.6, cit., p.72.

²⁸⁶ Ibidem.

of Economic, Social and Cultural Rights. In this sense, the question reflected on the measures that States are required to adopt to prevent or minimize the impact of climate change, also in light of the obligations established by other international agreements, such as the Paris Agreement.²⁸⁷

The second theme focuses on the right for every individual and every community to access information, as enshrined in art. 13 of the American Convention. This also includes information concerning the human impacts of climate change and its effects on human mobility, migration and displacement.²⁸⁸ On the other hand, the third theme revolves around the obligations of States toward children and the new generations, identified as the most vulnerable category to the long-term consequences of climate change.²⁸⁹

The fourth theme concerns the protection of environmental defenders including indigenous and afro-descendant communities, while the fifth theme addresses the principle of common but differentiated human rights obligations and responsibilities of States in responding to the climate emergency.²⁹⁰ Colombia and Chile asked for clarifications on “what obligations and principles should guide the individual and coordinated measures that the States of the region should adopt to deal with involuntary human mobility, exacerbated by the climate emergency?”.²⁹¹ In this context, both States referred to the Intergovernmental Panel on Climate Change’s report on the impacts of climate change on human mobility, published in 2022. The report shows that climate change is already contributing to increased displacement and is expected to intensify these trends in the future.²⁹²

²⁸⁷ Feria-Tinta M., *An advisory opinion on climate emergency and human rights before the Inter-American Court of Human Rights*, cit., p.69.

²⁸⁸ Ibidem.

²⁸⁹ Kahl V., *Warming Up: The Chilean and Colombian Request for an Inter-American Advisory Opinion on the Climate Emergency and Human Right*, cit., p.70.

²⁹⁰ Ibidem.

²⁹¹ *Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile*, p.13, cit., p.72.

²⁹² Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2022: Impacts, Adaptation, and Vulnerability*, Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge University Press, 2022.

In 2025, the IACtHR issued its Advisory Opinion on the Climate Emergency and Humna Rights.²⁹³ The Court affirmed that causing irreversible harm to the environment is strictly prohibited under international law, and it recognized that the right to a healthy environment also encompasses the right to a healthy climate. On this basis, the Court held that States are obliged to protect the climate system and provide full reparation for any harm resulting from the violation of those obligations.²⁹⁴ Moreover, in addressing the transboundary nature of climate harm, the Court further affirmed that States may be held responsible for human rights violations occurring outside their territory where the high-emitting activities causing them are within their jurisdiction or control. This includes failures to regulate multinational corporations domiciled in a State's territory, thereby expanding access to remedies for victims of climate-related harm.²⁹⁵

Adopting an equity-based approach, the Court called for the need to remove procedural barriers to access to justice and emphasized the need for differentiated protective measures for groups most vulnerable to climate harm, including Indigenous Peoples, women, children, persons with disabilities, and future generations. It reaffirmed States' duty to protect environmental human rights defenders and guarantee access to accurate and reliable climate information, as essential components of democratic governance and effective human rights protection.²⁹⁶

With specific regard to climate-related displacement, The Court stated in para. 416 that climate change directly affects freedom of movement as it can trigger forced migration and involuntary displacement by exacerbating pre-existing vulnerabilities such as conflict, poverty and food insecurity. This concept is further developed in para. 417, where the Court reiterated that forced displacement may result from slow on-set climate impacts such as droughts, land degradation, sea level rise, etc. which are expected to intensify in the future.²⁹⁷

²⁹³ Inter-American Court of Human Rights (IACrHR), *Advisory Opinion OC-32/25 of 29 May 2025 Requested by the Republic of Chile and the Republic of Colombia: Climate Emergency and Human Rights*, 2025.

²⁹⁴ Tigre, M. A., Bönnemann M. and Silverman-Roati K., *A Blueprint for Rights-Based Climate Action: The Inter-American Court of Human Rights' Advisory Opinion on the Climate Emergency*, VerfBlog, 2025.

²⁹⁵ Ibidem.

²⁹⁶ Khatri U., *What a Historic Inter-American Court Ruling Means for Global Climate Justice*, Center for International Environmental Law, 2025.

²⁹⁷ Inter-American Court of Human Rights (IACtHR), *Advisory Opinion OC-32/25 of 29 May 2025*, cit., p.70.

In paras. 420-422, the Court further recognized that, as climate change contributes to both internal and cross-border migration, it creates situations in which the displaced individuals face lack of protection. In this sense, States are required to cooperate at the international level in order to effectively protect the rights of climate-displaced persons. This principle is also reiterated in para. 430, with particular reference to existing international frameworks that call on States to cooperate on displacement, migration, planned relocation, early warning systems, and cross-border contingency planning.²⁹⁸

Lastly, in para. 433, the Court held that States must establish adequate domestic legal and administrative frameworks to ensure the legal and humanitarian protection of people displaced across borders due to climate change. It indicated that this includes creating appropriate migration categories, such as humanitarian visas or temporary protection statuses, and ensuring protection against refoulement, without excluding the possibility of longer-term cooperative solutions at the international level.²⁹⁹

This Advisory Opinion represents a key development in the protection of climate and environmental migrants, as it marks the first time an international court has openly declared the need to create specific legal categories to ensure the protection of climate-displaced individuals. If followed by concrete actions and implementation measures, it may have truly a transformative impact.³⁰⁰

Nonetheless, it is important to note that the Court continues facing numerous limitations in comprehensively addressing the intersection between climate change and human rights, especially with regard to environmental displacement. One of the most significant constraints is that neither Canada, nor the US, are parties to the American Convention. This raises questions on how effective the Court's guidance can be within the Americas, as it does not formally bind the region's largest GHG emitters. It becomes even more challenging when considering that a substantial share of the oil, mining and deforestation operations takes place within such States' jurisdictions, mostly in the Global South.³⁰¹

²⁹⁸ Ivi, p.74.

²⁹⁹ Ibidem.

³⁰⁰ Khatri U., *What a Historic Inter-American Court Ruling Means for Global Climate Justice*, cit., p.74.

³⁰¹ Feria-Tinta M., *An advisory opinion on climate emergency and human rights before the Inter-American Court of Human Rights*, cit., p.69

1.2. The European System

At the European level, two distinct frameworks offer indirect avenues of protection relevant to climate and environment-related mobility. Within the European Union, the contribution is primarily *ex ante* and legislative. Through the Qualification Directive, the Temporary Protection Directive and the Return Directive, it sets standards that national authorities and courts may apply and interpret broadly to avoid protection gaps. On the other hand, within the Council of Europe, protection is mainly *ex post* and judicial. In fact, the European Court of Human Rights has expanded the reach of the Convention through its case law, in particular under Article 2 (right to life), Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (respect for private and family life), establishing positive and negative obligations for States.³⁰² Nevertheless, at the broader regional level, while these two frameworks, and the different approaches they embody, offer important tools for protection, they continue to leave significant gaps in ensuring effective and comprehensive safeguards for migrants displaced by environmental degradation.³⁰³

In fact, focusing on the European Union, climate policy and migration policy have largely developed in parallel tracks, illustrated by the separation between flagship initiatives such as the European Green Deal and the New Pact on Migration and Asylum, with limited integration of measures specifically addressing climate-related displacement. In this sense, three possible avenues have been identified for strengthening protection within European legal space: a) a broader application of existing protection instruments under EU law; b) an evolutive interpretation by the Court of Justice of the European Union of asylum and migration provisions in light of potential environmental threats to migrants' rights; and 3) a revision of the Common European Asylum System (CEAS) within the framework of the New Pact, with explicit reference to the environmental causes of migration.³⁰⁴

The first two options appear as the most effective in the short-term, as they do not require reopening extensive negotiations or amendments. In fact, three EU directives

³⁰² Eveno V. B. and Teles P.G., *Élévation du niveau de la mer et droit international: De l'adaptation à l'action*, cit., p.2.

³⁰³ Scissa C., *The Climate Changes, Should EU Migration Law Change as Well? Insights from Italy*, European Journal of Legal Studies, 14, pp. 5 - 23, 2022.

³⁰⁴ Ibidem.

could already offer a substantive base for the protection of climate and environmental migrants:³⁰⁵ the Qualification Directive (QD),³⁰⁶ the Temporary Protection Directive (TPD),³⁰⁷ and the Return Directive.³⁰⁸

The Qualification Directive defines the standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection. In practice, this protection is rarely granted solely on environmental grounds, unless the climate-related conditions interact with risks that fall within persecution or severe harm criteria.³⁰⁹

On the other hand, the Temporary Protection Directive is applicable in case of mass influx of people seeking international protection who are unable to return to their home countries due to armed conflicts or other severe systemic and generalized human rights violations. In the future, this definition might also include environmental disasters.³¹⁰ However, the Directive presupposes that displacement originates from the same geographical area and is caused by the same underlying reason, a condition that is rarely met in cases of environmental migration.³¹¹ In addition, the Commission has expressed its intention to repeal the Directive and replace it with a crisis management mechanism,³¹² thereby further calling into question its continued relevance.³¹³

The Return Directive, which introduces common standards on return procedures, may serve as a protective mechanism for climate and environmental migrants. In

³⁰⁵ Ivi, p.76.

³⁰⁶ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 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), OJ L 337 of 20 December 2011.

³⁰⁷ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [2001] OJ L212/12.

³⁰⁸ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals [2008] OJ L348/98 (Return Directive).

³⁰⁹ Directive 2011/95/EU, cit., p.77.

³¹⁰ Council Directive 2001/55/EC, cit., p.77.

³¹¹ Ibidem.

³¹² European Commission, *Proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum*, COM (2020) 613 final (Migration Crisis Proposal).

³¹³ Scissa C., *The Climate Changes, Should EU Migration Law Change as Well?*, cit., p.76.

particular, in relation to the principle of non-refoulement, art. 5 requires Member States to take into account the best interests of the individual, including their family life and state of health when implementing the Directive.³¹⁴ Moreover, art. 9 obliges Member States to postpone the removal if violations of such principle are found.³¹⁵ The Directive also allows Member States, at any time, to withdraw or suspend a return decision or to grant a right to stay on compassionate, humanitarian, or other grounds.³¹⁶

At the same time, the European human rights framework – most importantly the jurisprudence of the European Court of Human Rights – has developed significant case law recognizing the right to live in a healthy environment, mainly through articles 2 (right to life) and 8 (right to private and family life) of the ECHR.³¹⁷ In this sense, the Court has affirmed the existence of positive obligations on States, which are required not only to refrain from interference but also to adopt all appropriate measures for the effective protection of these rights, including in situations “where the right to life is under threat from a natural disaster and the danger is imminent and clearly identifiable”.³¹⁸

Quite relevant is also art. 3 of the ECHR, which prohibits torture and inhuman or degrading treatment or punishment. Because the Convention does not contain any explicit prohibition of refoulement, almost all cases brought before the ECtHR in this sense are based on violations of art. 3. However, the Court has also opened the possibility of future claims being based also on other provisions of the ECHR, including Articles 4 (prohibition of slavery and forced labor), 5 (right to liberty and security), 6 (right to a fair trial), and 9 (right to freedom of thought, conscience, and religion).³¹⁹

Nonetheless, the threshold for finding a violation of these rights remains high and is only rarely satisfied. In particular, the Court generally requires that the environmental harm reaches a sufficient level of seriousness, exceeding the inconvenience normally associated with modern life, and that it must be personally attributable to the applicant.³²⁰

³¹⁴ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008, art.5, cit., p.77.

³¹⁵ Ibidem, art. 9.

³¹⁶ Ibidem, art. 6(4).

³¹⁷ Basile V., *La giurisprudenza della Corte europea in materia ambientale: un breve inquadramento*, in *Migrazioni e diritti al tempo dell'antropocene*, Editoriale Scientifica, 2023.

³¹⁸ European Court of Human Rights, *Guide to the Case Law of the European Court of Human Rights*, Environment 29, 2022.

³¹⁹ Del Guercio A., *Cambiamento climatico, migrazioni internazionali e diritti umani*, in *Migrazioni e diritti al tempo dell'antropocene*, Editoriale Scientifica, 2023.

³²⁰ Ibidem.

Moreover, in *Dubetska and Others v. Ukraine*,³²¹ the Court has also introduced a knowledge requirement, holding that a violation is more likely to be found where the environmental harm is persistent and well known to the State authorities, rather than resulting from sudden or unforeseeable events.³²² In that case, the Court found a breach of art. 8 given that the Ukrainian authorities' response to long-standing pollution had been inconsistent and repeatedly delayed.³²³

A turning point in climate litigation occurred on 9 April 2024 in the case of *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*,³²⁴ brought before the ECtHR by a Swiss environmental association representing elderly women, together with four Swiss citizens. The applicants contested a violation of Articles 2, 8, and 6(1) of the ECHR, on the grounds that elderly people are particularly exposed to risks to their health and life from heat waves linked to greenhouse gas emissions (GHG).³²⁵ On the merits, the Court traced the obligation to mitigate climate change back to Articles 8 and 6(1) of the ECHR, stating that Switzerland had failed to take adequate measures to combat the effects of climate change and ensure access to justice for the applicant association.³²⁶ In this sense, the Court recognized the right to benefit from effective protection against the serious implications of climate change on health, well-being, and quality of life,³²⁷ from which derives the duty of the State to adopt and effectively implement measures capable of mitigating current and future effects that are potentially irreversible.³²⁸

Another key aspect of the ruling concerns the attribution of state responsibility in the context of a global phenomenon such as climate change. Referring to the principle of common but differentiated responsibilities, as well as to its prior jurisprudence on concurrent State responsibility, the Court affirmed that each State bears responsibility for

³²¹ European Court of Human Rights, *Dubetska and Others v. Ukraine*, App. No. 30499/03, p.105, 2011.

³²² Ibidem.

³²³ Ibidem.

³²⁴ European Court of Human Rights, *Verein KlimaSeniorinnen Schweiz and others v. Switzerland* [GC], 53600/20, 2024.

³²⁵ Acconciamezza L., *Il contenzioso climatico davanti alla Corte europea dei diritti umani, tra aspettative, rischi e realtà*, in *Diritti umani e diritto internazionale*, Rivista quadrimestrale, pp. 369-382, 2/2024.

³²⁶ European Court of Human Rights, *Verein KlimaSeniorinnen Schweiz and others v. Switzerland* [GC], para. 573, cit., p.79.

³²⁷ Ibidem, para. 544.

³²⁸ Ibidem, para. 545.

its own contribution in accordance with its capacities. A State cannot evade this responsibility by relying on the actions or omissions of other States.³²⁹

Overall, the Court adopted a cautious approach, which can be defined as judicial self-preservation, aimed at avoiding becoming a global arbiter of climate change. While recognizing that climate change is one of the most urgent challenges of our time, the Court reiterated that it can only intervene within the limits of its jurisdiction under Article 19 of the ECHR, in accordance with the principles of democracy, subsidiarity, and shared responsibility.³³⁰ It also emphasized that the role of the judiciary is complementary to that of the legislative and executive powers and cannot replace democratic processes. In fact, climate decisions are often largely political, with a significant margin of discretion being granted to national authorities.³³¹ However, the Court affirmed that in climate litigation the question is no longer whether human rights judges can intervene, but how they should do so.³³²

The ruling has sparked criticism at the political level, particularly in Switzerland and the United Kingdom, where the Court has been accused of excessive judicial activism. The Swiss Parliament has adopted a non-binding declaration challenging the Court's interpretation and calling on the government not to implement it, arguing that national climate policies already meet human rights standards. The concrete effects of the ruling therefore remain uncertain, as well as future developments in the Court's case law on climate issues.³³³

³²⁹ Pisillo Mazzeschi R., *Diritti umani e cambiamento climatico: brevi note sulla sentenza Klima Seniorinnen della Corte di Strasburgo*, in *Diritti umani e diritto internazionale*, Rivista quadrimestrale, pp. 383-400, 2/2024.

³³⁰ Acconciamezza L., *Il contenzioso climatico davanti alla Corte europea dei diritti umani*, tra aspettative, rischi e realtà, cit., p.79.

³³¹ Del Guercio A., *Cambiamento climatico, migrazioni internazionali e diritti umani*, cit., p.82.

³³² Iyer M., *Environmental Migration in Regional Human Rights Courts*, cit., p.69.

³³³ Acconciamezza L., *Il contenzioso climatico davanti alla Corte europea dei diritti umani*, tra aspettative, rischi e realtà, cit., p.79.

2. National Case Studies

The EU instruments and case laws discussed above demonstrate how protection from climate- or environmental- related harm may, in certain circumstances, be implicitly accommodated within existing European legal frameworks. Nevertheless, in the absence of an explicit level of protection at the European level for climate migrants, responsibility largely falls to national authorities, making it susceptible to significant variation across the EU.³³⁴

With the exception of one case in France, analyzed in the following section, no international or domestic court has so far granted full relief and protection to environmental and climate migrants. Rather, courts' rulings in this regard have supported the common belief that there is still time to avoid the extreme negative effects of climate change and the consequent threat they pose to human rights.³³⁵

In this context, the recent decisions in Italy and France may have a leading role in guiding the process toward a more expansive protection of particular rights and freedoms, holding states accountable for not keeping pace with their commitments.³³⁶ In fact, national experiences may have a generative and formative function, often preceding regulatory or jurisprudential developments at the regional and international level, exposing gaps in the protection framework, while proposing innovative solutions through existing legal institutions, such as demonstrating how the right to asylum can be interpreted to incorporate climate and environmental migrations. These decisions are able to foster multi-level jurisprudential dialogue and more broadly influence the development of European legal discourse on climate-related obligations.³³⁷

In Italy, for example, the growing relevance of climate change was reflected in the constitutional reform of 2022, that added para. 3 of Art.9, which establishes the State's responsibility to protect the environment, biodiversity and ecosystems in the interest of future generations. Moreover, Art. 41 now clarifies that the right to conduct a business cannot conflict with social utility, security, freedom, human dignity, and, following the

³³⁴ Scissa C., *The Climate Changes, Should EU Migration Law Change as Well? Insights from Italy*, cit., p.76.

³³⁵ Iyer M., *Environmental Migration in Regional Human Rights Courts*, cit., p.69.

³³⁶ Ibidem.

³³⁷ Ibidem.

reform, health and the environment.³³⁸ Similar positive obligations have also been recognized in France notably through the so-called “Case of the Century”, which will be further discussed in the following section.

2.1. France

The French legal system does not provide specific protection status for persons displaced by climate change, nor does it refer to “humanitarian protection” based on the principle of non-refoulement or the prohibition of torture.³³⁹

The French protection system is divided into four main categories. These include refugee status based on the 1951 Geneva Convention and refugee status as provided in the French Constitution, which has a more political dimension and protects those who have taken concrete action to defend freedom in their own country and are persecuted for this reason. A third category regards subsidiary protection, governed by European Union law, while the fourth concerns a special status for those who fall under the mandate of the United Nations High Commissioner for Refugees (UNHCR), which guarantees the right to asylum in France like any other refugee recognized by the Office Français de Protection des Réfugiés et des Apatrides (OFPRA). As of today, none of these pathways has ever been applied to cases of migration caused expressly by climate change or natural disasters.³⁴⁰

In light of this gap, over the years, French courts have assumed a pivotal role in shaping guidance through their jurisprudence.

A first example dates back to 2019, when a woman won a favorable ruling against the French government for failing to adequately address air pollution that was adversely affecting her family's life.³⁴¹

Subsequently, in 2021, with the so-called “Case of the Century”,³⁴² the Paris Administrative Court, for the first time in French law, recognized the partial responsibility

³³⁸ Gentile C. and Valentini G., *A Step Forward in Italian Climate Litigation*, Verfassungsblog, 2025.

³³⁹ Negozio F. and Rondine F., *Analyzing national responses to environmental and climate-related displacement: A comparative assessment of Italian and French legal frameworks*, Quarterly on Refugee Problems - AWR Bulletin, 61(1), 53–70, 2022.

³⁴⁰ Ibidem.

³⁴¹ Tower A., and Plano, R., *French court recognizes country's first environmentally-impacted migrant*, Climate Refugees, 2021.

³⁴² Tribunal administratif de Paris, n° 1904938, 3 février 2021.

of the French state for failing to take adequate action against climate change. The case originated when four environmental associations sued the French government for climate inaction, supported by a petition with 2.3 million signatures, as well as by numerous protests, demanding stronger climate policies, better emission reductions and adherence to ecological promises. The Court declared the liability action against the State admissible and found that the ecological damage reported by the associations did exist. It also ordered a further investigation to determine what measures should be imposed on the State in order to repair the damage and prevent it from worsening.³⁴³

The reasoning behind this decision is rooted in article 1246 of the French Civil Code which states that “Any person responsible for ecological damage is required to repair it”. Here, the Court implicitly considered the provision applicable to the State.³⁴⁴

Then, in order to determine whether the State had failed to fulfill its obligations, the Court carefully examined the compliance with the greenhouse gas emission reduction targets the Government itself had set.³⁴⁵ The judges took into account the annual reports published by the High Council for Climate, an independent body responsible for providing opinions and recommendations on the implementation of public policies and measures aimed at reducing GHG emissions in France, which confirmed that the country’s actions were not yet commensurate with the challenges and objectives it has set itself.³⁴⁶ Moreover, it highlighted the absence of significant reductions in emissions in all the main economic sectors concerned, including transport, agriculture, construction, and industry.³⁴⁷ With this evidence, the Court found the state guilty of not meeting its own commitments and failing to comply with the planned trajectory. It also ruled that the applicants were entitled to seek compensation in kind for the so-called “ecological damage” and awarded each of the applicant organizations a symbolic compensation of one euro for non-pecuniary damage, as the State's failure to comply with climate commitments had caused harm to the collective interest.³⁴⁸

³⁴³ Gibson Dunn, *The Case of the Century – The French Administrative Court Issues a Groundbreaking Ruling on State Responsibility for Climate Change*, 2021.

³⁴⁴ Ibidem.

³⁴⁵ Ibidem.

³⁴⁶ High Council for Climate, *Boosting Mitigation, Setting Adaptation in Motion*, Annual Report, 2021.

³⁴⁷ Ibidem.

³⁴⁸ Willsher K., *Court convicts French state for failure to address climate crisis*, The Guardian, 2021.

In its written defense, the French government rejected the accusations of inaction and requested that all claims for compensation be dismissed. In particular, it argued that the State could not be held solely responsible for climate change, since it was not the source of all global emissions.³⁴⁹

Nevertheless, this decision aligns with the development of a coherent line of jurisprudence that, paired with other rulings of the Conseil d'État, France's highest administrative court, confirm the growing pressure on the State to comply with its environmental obligations.³⁵⁰

The most significant and revolutionary development, however, is the recognition of France's first so-called "climate refugee", in a case involving a Bangladeshi citizen³⁵¹ suffering from severe asthma who was granted permission to remain in France on the grounds that the extreme levels of air pollution in his country of origin represented a serious threat to his health.³⁵²

The applicant was originally from Bangladesh and arrived in France in 2011, settling in Toulouse after fleeing persecution in his hometown in the north of Dhaka, the country's capital. Upon his arrival, he applied for political asylum, but his application was rejected by the French authorities. Therefore, he remained in the country as a rejected asylum seeker and began the proceedings to obtain a residence permit as a foreigner suffering from a serious illness, which he only obtained in 2015, after working several years.³⁵³ He was granted a temporary residence permit on health grounds, reserved for foreign nationals who need specific medical treatment that is not available in their country of origin. However, in 2017, the doctors responsible for providing opinions to the government authorities argued that he could also receive adequate treatment in Bangladesh. On the basis of those assessments, the Haute-Garonne prefecture decided not to renew his residence permit, a decision that led to the adoption of an expulsion order in 2019.³⁵⁴

³⁴⁹ Ivi, p.83.

³⁵⁰ Gibson Dunn, *The Case of the Century*, cit., p.83.

³⁵¹ Cour Administrative d'Appel de Bordeaux, 2ème chambre, 20BX02193, 20BX02195, 18 December 2020.

³⁵² Bensadon F., *France's First Climate Refugee – A Sign of a Promising Future for Climate Migration?*, Earth Refuge, 2021.

³⁵³ Negozio F. and Rondine F., *Analyzing national responses to environmental and climate-related displacement*, cit., p.82.

³⁵⁴ Bensadon F., *France's First Climate Refugee*, cit., p.84.

Nevertheless, the applicant challenged the decision and brought his complaint up to the Bordeaux Administrative Court of Appeal, which finally overturned the decision and ordered the renewal of the permit as a sick foreigner. The groundbreaking aspect of this case is that, for the first time, a judge took into consideration the environmental conditions of the country of origin when issuing its final decision. They evaluated the high levels of air pollution in Bangladesh that would have led to a significant worsening of the serious respiratory diseases from which the applicant suffered.³⁵⁵ To reach this conclusion the Court considered various factors, including the specificity of his medical needs, the actual availability of treatment in France but not in Bangladesh, the improvement in his respiratory condition after his arrival in France, as well as data from the World Health Organization on the impact of air pollution on health, finding that, if returned, the applicant would not have had access to adequate treatment and would have been exposed to a real risk of deterioration in his health and premature death.³⁵⁶ This way, following the ruling of the UN Human Rights Committee of January 2020 in the case of *Teitiota v. New Zealand*, the Court has finally introduced the environmental factor as a relevant criterion in the assessment of removal measures in the French legal system.³⁵⁷

However, the scope of the ruling remains limited. In fact, a favorable outcome is closely linked to the strict conditions that must be met in order to obtain a residence permit on health grounds and does not imply a general recognition of protection for environmental migrants. Therefore, the relevance of environmental degradation continues to remain limited to situations of extreme and direct impacts on the health of the person concerned.³⁵⁸

Additionally, although the environmental criterion has been already evoked in some cases and even used as the leading argument for the final ruling, including that of the Bangladeshi citizen discussed above, the notion of “climate refugee” is still not officially

³⁵⁵ Negrozio F. and Rondine F., *Analyzing national responses to environmental and climate-related displacement*, cit., p.82.

³⁵⁶ Tower A., and Plano, R., *French court recognizes country's first environmentally-impacted migrant*, cit., p.82.

³⁵⁷ Ibidem.

³⁵⁸ Negrozio F. and Rondine F., *Analyzing national responses to environmental and climate-related displacement*, cit., p.82.

incorporated in the French legal system. As a result, applicants cannot be formally recognized as such.³⁵⁹

2.2. Italy

In recent years, climate change has become an increasingly debated issue in Italy, particularly with regard to the jurisdiction of the Italian judiciary and the potential liability of both public and private actors for climate inaction.³⁶⁰ The first climate case ever brought before an Italian court was the *Giudizio Universale* decision,³⁶¹ delivered by the Civil Tribunal of Rome in 2024.

The case originated when more than 200 individuals and environmental associations brought an action against the Italian State before the Civil Tribunal of Rome, arguing that the State's efforts to mitigate climate change were insufficient to meet the targets set by the Paris Agreement.³⁶² The applicants claimed that climate change was adversely affecting their right to life (Art. 2 ECHR and Art. 2 of the Italian Constitution), to health (Art. 32 of the Italian Constitution), and to private and family life (Art. 8 ECHR). Given that the State has an obligation to protect these fundamental rights, they argued that it consequently also has a duty to combat climate change. Accordingly, the applicants requested the State to adopt all necessary measures, including legislative measures, to reduce artificial national CO₂ emissions by 2030.³⁶³

In response, the Presidency of the Council of Ministers argued that the claims were inadmissible on the grounds of exceeding judicial jurisdiction and abuse of power, and that ordinary courts lacked jurisdiction over the matter. It also affirmed that, given the global nature of climate change, the State could not be held responsible.³⁶⁴

Following this reasoning, the Civil Tribunal of Rome declared the application inadmissible for lack of jurisdiction over both the claims and the power to grant the remedies sought, as “the complaints lodged are directed against the political choices made

³⁵⁹ Bensadon F., *France's First Climate Refugee*, cit., p.84.

³⁶⁰ Gentile C. and Valentini G., *A Step Forward in Italian Climate Litigation*, cit., p.82.

³⁶¹ Civil Tribunal of Rome, Judgement n. 3552/2024, *A Sud et al. c. Italia (Giudizio universale)*, 26 February 2024.

³⁶² Cecchi R., *Il Giudizio (o Silenzio?) Universale: una sentenza che non farà la storia*, Diritti Comparati, 2024.

³⁶³ Lattanzi U., *Climate Litigation Reaches Italian Courts*, Verfassungsblog, 2024.

³⁶⁴ Ibidem.

by the holders of State sovereignty as to the concrete ways in which they combat climate change”.³⁶⁵ In particular, the Court emphasized that ordinary courts do not have the power to order the legislature whether and which legislation to pass. In fact, it stressed that in the Italian legal order, Courts cannot hold the State liable for non-exercising its legislative prerogatives, a limitation deriving from the principle of separation of powers.³⁶⁶

Nonetheless, the case highlights the growing relevance of climate change within the Italian legal context, a trend further confirmed by the *Greenpeace v. Eni*³⁶⁷ case. In 2023, two environmental associations, Greenpeace O.n.l.u.s. and Recommon E.t.s., as well as twelve Italian citizens residing in areas particularly exposed to the effects of climate change, sued the fossil fuel company ENI S.p.A. together with its two major shareholders, the Italian Ministry of Economy and Finance (MEF) and Cassa Depositi e Prestiti S.p.A (CDP), before the Civil Tribunal of Rome. They claimed that ENI’s actions were contributing to global warming, causing serious environmental risks and health impacts which had resulted in the violation of fundamental rights protected by the Italian Constitution as well as EU and international law. Moreover, they argued that the MEF and CDP had considerable influence on the company and therefore held enough power to stop such polluting activities. The applicants requested the Court to hold the defendants responsible for failing to comply with internationally recognized climate obligations, and to order them to take all necessary measures to ensure alignment with the climate objectives established by the Paris Agreement.³⁶⁸

The case was brought before the Supreme Court of Cassation to determine whether ordinary courts have jurisdiction on such claims. In its ruling, the Court addressed for the first time some pivotal issues in Italian climate litigation. In particular, it recognized that ordinary courts may exercise jurisdiction over cases addressing damages caused by climate-altering activities led by private actors and, at the same time, affirmed that public authorities, as major shareholders in private companies, may be held responsible for failing to control such companies’ strategies.³⁶⁹

³⁶⁵ Civil Tribunal of Rome, Judgement n. 3552/2024, *A Sud et al. c. Italia (Giudizio universale)*, p.12, cit., p.86.

³⁶⁶ Lattanzi U., *Climate Litigation Reaches Italian Courts*, cit., p.86.

³⁶⁷ Court of Cassation, Judgement n. 20381/2025, *Greenpeace Italy et. Al. v. ENI S.p.A., the Italian Ministry of Economy and Finance and Cassa Depositi e Prestiti S.p.A.*, 21 July 2025.

³⁶⁸ Gentile C. and Valentini G., *A Step Forward in Italian Climate Litigation*, cit., p.82.

³⁶⁹ Ibidem.

Ultimately, *Greenpeace v. ENI* represents a turning point for the development of climate case law in Italy, as it constitutes the first recognition of Italian jurisdiction on climate change-related cases. In this sense this decision may lay the groundwork for more robust forms of climate litigation in the future.³⁷⁰

The emerging of the topic as a pressing issue within Italian legislative and judicial spheres, led to growing attention also being paid to its impacts on communities. In particular, with regard to climate- and environment-related migration, Italy is often cited as an instructive European case because it is the only Member State that provides multiple protection statuses for environmental migrants in its legal system.³⁷¹ In fact, the influence of climate change and disasters on migration has been recognized by Italian courts, tribunals, and decision-makers, through the adoption of specific pieces of legislations. As of today, this is still very uncommon in the EU and worldwide, making Italy a pioneering case.³⁷²

The Italian legal framework for the protection of third-country nationals is organized under three main regimes, the first of which is refugee status, within the meaning of the 1951 Geneva Convention. This regime is rarely applied in cases of displacement induced by climate change and environmental degradation, especially because in the Italian practice, no case of refugee recognition has ever been considered as directly and exclusively linked to environmental or climate-related hazards in the country of origin.³⁷³

The second regime is the subsidiary protection, complying with the EU “Qualification Directive”,³⁷⁴ which similarly to the previous protection regime, is hardly ever obtained solely on environmental grounds, unless the individual is exposed to other forms of serious harm. Even though art.15 of the Directive provides an exhaustive definition of this wording, and it is indisputable that in certain cases climate change has negative effects which could constitute inhuman or degrading treatment, the Italian

³⁷⁰ Ivi, p.87.

³⁷¹ Scissa C. and Bossi M., *Strumenti giuridici esistenti a livello internazionale, europeo e nazionale per la tutela dei migranti ambientali*, cit., p.38.

³⁷² Scissa C., *Italy's Migration Policies Amidst Climate Change: An Assessment*, Istituto Affari Internazionali Commentaries, 2024.

³⁷³ Negozio F. and Rondine F., *Analyzing national responses to environmental and climate-related displacement*, cit., p.82.

³⁷⁴ Directive 2011/95/EU, cit., p.77.

Supreme Court of Cassation has still not recognized environmental and climate hazards within that definition.³⁷⁵

The last regime encompasses all the other forms of complementary protection. This included the former “humanitarian protection”, regulated by art. 5.6 of the Consolidated Immigration Act,³⁷⁶ which has recently been replaced by the ‘special protection’ provided in Art. 19 of the same Act. Additional forms of protection may be granted through a “residence permit for health care” (Art. 19 para. 2, d-bis, and Art. 36), or a “residence permit for calamity” (Art. 20 bis).³⁷⁷ The latter was introduced by the 2018 Security Decree³⁷⁸ which established the possibility of issuing a residence permit in situations of “contingent and exceptional calamity”. However, this provision was subsequently amended by the 2020 Lamorgese Decree,³⁷⁹ which broadened its potential applicability to a wider range of cases by lowering the threshold to “grave calamity”.³⁸⁰ Under this wording, a six-month permit may be issued when the country to which the foreign national should be returned to is affected by a serious disaster that does not allow their safe stay. The permit can only be renewed once, if the conditions of exceptional disaster persist.³⁸¹ In this regard, a circular adopted by the Ministry of the Interior instructed the police to “take an active role in requesting information from the competent diplomatic and consular authorities, in order to verify the existence of the “state of calamity” required by the law, with specific reference to the geographical area to which the foreign national would be returned”.³⁸²

³⁷⁵ Negozio F. and Rondine F., *Analyzing national responses to environmental and climate-related displacement*, cit., p.82.

³⁷⁶ Legislative Decree of 25 July 1998, No. 286, *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero* (G.U. No. 191 of 18 August 1998), D. Lgs. 286/1998 or ‘Consolidated Immigration Act’.

³⁷⁷ Scissa C., *The Climate Changes, Should EU Migration Law Change as Well?*, cit., p.76.

³⁷⁸ Legislative Decree, 113/2018, *Disposizioni urgenti in materia di protezione internazionale e immigrazione, sicurezza pubblica, nonché misure per la funzionalità del Ministero dell'interno e l'organizzazione e il funzionamento dell'Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata* (cd. Decreto Sicurezza), 4 ottobre 2018.

³⁷⁹ Legislative Decree, 130/2020, *Disposizioni urgenti in materia di immigrazione e sicurezza* (cd. Decreto Lamorgese), 21 ottobre 2020.

³⁸⁰ Di Filippo M., *La protezione dei migranti ambientali nel dialogo tra diritto internazionale e ordinamento italiano*, in *Diritti umani e diritto internazionale*, Rivista quadrimestrale, pp. 313-336, 2023.

³⁸¹ Ibidem.

³⁸² Circular n. 400/A/2019/12.214, p. 2, 18 gennaio 2019.

As for the humanitarian protection mentioned above, it was repealed in 2018 after intense debates during that year's parliamentary election campaign. Until then, and for almost two decades, it had represented, together with the refugee status and subsidiary protection, a key pillar for completing the right to asylum in Italy, as recognized by the Court of Cassation in its judgement 4455/2018.³⁸³

In 2015, the National Asylum Commission had started providing guidance to the Territorial Commissions on the requirements for the recognition of humanitarian protection, clarifying that this form of protection could also be granted for "serious natural disasters or other serious local factors preventing a dignified and safe return".³⁸⁴ As a result, both the Territorial Commissions and the courts increasingly acknowledged environmental and climatic factors as relevant elements to be taken into account when assessing eligibility for humanitarian protection.³⁸⁵

This development shows the inherently flexible nature of this instrument, that was not based on specific criteria or definitions, but rather on an individualized evaluation of vulnerability.³⁸⁶

Exactly because of this flexibility, the instrument became the target of harsh criticism by right-wing parties, who had already expressed deep concerns on the ongoing "invasion of illegal migrants", as stated by Giorgia Meloni, leader of Fratelli d'Italia, during the 2018 campaign.³⁸⁷ An even stronger opponent was Matteo Salvini, leader of the Lega party, who argued that immigration was already out of control, generating significant social conflict.³⁸⁸ In fact, when the new government was formed by Lega and Movimento 5 Stelle, Salvini, as Minister of Interior, put an end to this institution. Through art. 1 of the Salvini Decree humanitarian protection was repealed and any reference to constitutional and international obligations was removed. At the same time, art. 19 introduced the "special protection", which only covered victims of torture, persecution, and massive violations of human rights, significantly narrowing the number

³⁸³ Scissa C. and Bossi M., *Strumenti giuridici esistenti a livello internazionale, europeo e nazionale per la tutela dei migranti ambientali*, cit., p.38.

³⁸⁴ National Asylum Commission, circular no. 00003716 of July 30, 2015.

³⁸⁵ Del Guercio A., *Cambiamento climatico, migrazioni internazionali e diritti umani*, cit., p.78.

³⁸⁶ Scissa C. and Bossi M., *Strumenti giuridici esistenti a livello internazionale, europeo e nazionale per la tutela dei migranti ambientali*, cit., p.38.

³⁸⁷ Sunderland J., *Xenophobia in Italy's Election Campaign*, Human Rights Watch, 2018.

³⁸⁸ Ibidem.

of potential beneficiaries compared to the previous humanitarian protection.³⁸⁹ Between 2016 and 2018 humanitarian protection was granted to an average of 22% of applicants each year, while approximately 60% of asylum applicants were rejected. Following the entry into force of the Salvini Decree, a concerning shift emerged immediately. In 2019, the first year of its implementation, special protection was granted to only 0,65% of applicants, while the rejection rate rose to 80%.³⁹⁰

In 2019, the government collapsed and was replaced by a new coalition which included the M5S, the Democratic Party, and other left-wing parties. The new government withdrew some of the provisions of the Salvini Decree and adopted the Lamorgese Decree, broadening the scope and the content of special protection. This reform extended the protection to individuals at risk of torture, inhuman or degrading treatment, discrimination or threat to their right to private and family life, stating that “the refoulement or expulsion of a person to a State shall not be permitted where there are substantial grounds for believing that the removal from the national territory would result in a violation of the right to respect private and family life, unless it is necessary for reasons of national security or public order”.³⁹¹ As a result, in 2021 the share of applicants granted special protection increased to 14%, while the rejection rate declined to 58%.³⁹²

A further crucial development occurred in 2023, with the adoption of the Cutro Decree,³⁹³ promoted by the right-wing governing coalition composed of Fratelli d’Italia, Forza Italia and Lega. This decree significantly affected special protection, which was not formally abolished, but substantially restricted, effectively nullifying the recent reforms that had strengthened its scope. The Cutro Decree repealed the provision introduced by the Lamorgese decree, which had expanded protection beyond the risk of persecution, torture, and inhuman or degrading treatment to include potential violation of the right to private and family life, representing a return to the previous restrictive

³⁸⁹ Negozio F. and Rondine F., *Analyzing national responses to environmental and climate-related displacement*, cit., p.82.

³⁹⁰ Openpolis, *Il decreto Cutro colpisce i diritti dei richiedenti asilo*, 2023.

³⁹¹ Negozio F. and Rondine F., *Analyzing national responses to environmental and climate-related displacement*, cit., p.82.

³⁹² Openpolis, *Il decreto Cutro colpisce i diritti dei richiedenti asilo*, 2023.

³⁹³ Legislative Decree, 20/2023, *Disposizioni urgenti in materia di flussi di ingresso legale dei lavoratori stranieri e di prevenzione e contrasto all'immigrazione irregolare* (cd. Decreto Cutro), 11 marzo 2023.

approach established by the Salvini decree and weakening safeguards for asylum seekers, while increasing the risk of irregular migration in the country.³⁹⁴

These legislative developments show the persistent political conflict and deep divisions within the Italian system, around the extension of protection for environment and climate- related migrations. In this context, the judiciary has played a vital role in providing interpretative clarity, guiding the reading of national asylum and migration provisions.³⁹⁵ In particular, the Supreme Court of Cassation, the highest court of appeal in Italy, has been central in promoting an evolutionary, human rights–based approach to the interpretation of the domestic legal provisions discussed above, unlocking their full potential.³⁹⁶

This perspective is confirmed by the Court’s recent jurisprudence. In 2018, in a case concerning a Gambian national seeking a residence permit on humanitarian grounds, the Court recognized that natural events may contribute to an individual’s vulnerability.³⁹⁷ It held that the lack of minimum conditions for a dignified life can also be found in the context of “a very serious political and economic situation resulting in radical impoverishment, characterized by the lack of basic necessities, including those not strictly essential, or even (...) a geopolitical situation that offers no guarantee of life in the country of origin (such as drought, famine, or situations of irremediable poverty)”.³⁹⁸

This reasoning was reiterated in judgement No. 7832/2019, where the Court recognized that a catastrophic environmental situation in the country of origin may give rise to the need for humanitarian protection.³⁹⁹ The case concerned a Bangladeshi national who had fled his country as a result of extreme poverty caused by “the disastrous climatic situation in the country of origin, to which governmental authorities had contributed through their conduct, in particular by promoting industrial shrimp farming in (Omissis), involving the occupation of large areas of land with aquaculture ponds, as well as through deforestation policies. In addition, there was a devastating increase in water salinity,

³⁹⁴ Openpolis, *Il decreto Cutro colpisce i diritti dei richiedenti asilo*, 2023.

³⁹⁵ Scissa C., *The Climate Changes, Should EU Migration Law Change as Well?*, cit., p.76.

³⁹⁶ Ibidem.

³⁹⁷ Del Guercio A., *Cambiamento climatico, migrazioni internazionali e diritti umani*, cit., p.78.

³⁹⁸ Court of Cassation, n.4555, 24 February 2018, par.5.

³⁹⁹ Del Guercio A., *Cambiamento climatico, migrazioni internazionali e diritti umani*, cit., p.78.

which had severe repercussions on agriculture and the availability of drinking water”.⁴⁰⁰ On this basis, the applicant argued that the environmental conditions in its country of origin exposed him to a higher level of vulnerability, therefore requiring protection by the Italian State in line with its constitutional and international obligations.⁴⁰¹

One year later, in judgment No. 2563/2020, the Court of Cassation addressed a similar case, again involving an asylum seeker from Bangladesh appealing against a decision rejecting his international protection claim. The applicant had arrived in Italy after losing his home due to the floods that affected large parts of the country in 2012 and 2017. He argued that, in the previous ruling, the environmental conditions in his country of origin had not been adequately taken into consideration.⁴⁰² This time, the Court held that environmental disasters, if supported by sufficient and reliable evidence, may significantly affect an applicant’s vulnerability, exposing them to violations of fundamental human rights, most importantly their right to life.⁴⁰³ The Court further affirmed that natural disasters have the capacity of exacerbating an individual’s vulnerability and lead to violations of basic human rights, therefore possibly constituting a compelling reason to leave.⁴⁰⁴ Accordingly, the judges endorsed an evolutionary interpretation of humanitarian protection in light of the residence permit introduced in 2018 for situations of contingent and exceptional calamity,⁴⁰⁵ suggesting that repeated flooding may “amount to a disaster preventing return to the country of origin under safe conditions”.⁴⁰⁶

A final case of particular relevance is judgement No. 5022/2021 of the Court of Cassation.⁴⁰⁷ The case concerned a migrant from the Niger Delta region who had fled to Italy due to the severe environmental degradation in his country of origin. In Italy he

⁴⁰⁰ Court of Cassation, n.7832, 20 March 2019.

⁴⁰¹ Ferri F. and Figoni L., *Breve ricognizione sulla tutela giuridica delle migrazioni nel contesto di disastri, cambiamenti climatici e degrado ambientale. Temi, problemi e prospettive in chiave decoloniale*, in *Il Cambiamento Climatico Non Conosce Frontiere*, ActionAid International Italia, 2024.

⁴⁰² Scissa C., *The Climate Changes, Should EU Migration Law Change as Well?*, cit., p.76.

⁴⁰³ Del Guercio A., *Cambiamento climatico, migrazioni internazionali e diritti umani*, cit., p.78.

⁴⁰⁴ Ferri F. and Figoni L., *Breve ricognizione sulla tutela giuridica delle migrazioni nel contesto di disastri, cambiamenti climatici e degrado ambientale*, cit., p.93.

⁴⁰⁵ Ibidem.

⁴⁰⁶ Court of Cassation, I Civil Section, n. 2563, 4 February 2020.

⁴⁰⁷ Court of Cassation, II Civil Section, n 5022, 24 February 2021.

applied for protection, but his requests were rejected both by the relevant Territorial Commission and subsequently by the Tribunal of Ancona. He then appealed the decision before the Court of Cassation, arguing that the Tribunal had not adequately considered the environmental conditions in the Niger Delta region, and had therefore violated art. 5 of the Consolidate Immigration Act by denying him with humanitarian protection.⁴⁰⁸

The Court of Cassation upheld both grounds of appeal. With regard to the first, the Court noted that the Tribunal had established the existence of a serious environmental crisis in the Niger Delta region, resulting from the indiscriminate exploitation of the area by oil companies as well as from ethnic and political conflicts. The Tribunal had also recognized the presence of paramilitary groups and the continuous sabotages and oil thefts, which had caused numerous oil spills, environmental contamination and severe instability.⁴⁰⁹ However, it concluded that the violence in question could not be classified as armed conflict and that the overall situation had not reached a level of severity sufficient to constitute a real threat to the applicant's life or health. In this regard, the Court found that the Tribunal had failed to adequately assess the relevant circumstances before ruling that the applicant did not qualify for either subsidiary or humanitarian protection.⁴¹⁰ In fact, the conditions highlighted give rise to a situation in which poverty and insecurity, resulting also from various acts of violence against public authorities, severely undermine the stability of the region and disproportionately affect segments of the population that do not have access to the main local natural resources.⁴¹¹

Contrary to the decision taken by the Tribunal, the Court of Cassation upheld the appeal and stated that it is a judge's responsibility to assess the conditions in the applicant's country of origin for the purposes of determining eligibility for humanitarian protection, "with specific reference to the particular risk to the right to life and dignified existence resulting from environmental degradation, climate change, or unsustainable development in the area". It highlighted the importance of taking into account that a threat

⁴⁰⁸ Del Guercio A., *Cambiamento climatico, migrazioni internazionali e diritti umani*, cit., p.78.

⁴⁰⁹ Di Filippo M., *La protezione dei migranti ambientali nel dialogo tra diritto internazionale e ordinamento italiano*, cit., p.89.

⁴¹⁰ Scissa C., *The Climate Changes, Should EU Migration Law Change as Well?*, cit., p.76.

⁴¹¹ Perrini F., *Il riconoscimento della protezione umanitaria in caso di disastri ambientali nel recente orientamento della Corte di Cassazione*, *Rivista di Ordine Internazionale e Diritti umani*, 349-362, 2021.

to life may arise also from social and/or environmental conditions and not only from situations of armed conflict.⁴¹² According to the Court, “From this perspective, war, or armed conflict in general, represents the most striking manifestation of man's self-destructive action, but it does not exhaust the range of behaviors capable of compromising the dignified living conditions for the individual. Such impairment, in fact, occurs in any situation where the socio-environmental context is so degraded that it exposes the individual to the risk of having their fundamental rights to life, liberty, and self-determination effectively nullified, or at least reduced below the threshold of their essential and inalienable core”.⁴¹³ In this regard, the Court specifies that “the concept of ‘the essential core of personal dignity’ (...) constitutes the minimum essential level below which dignified living conditions cannot be recognized and, therefore, the fundamental right to life of the individual is not guaranteed”.⁴¹⁴

The relevance of this ruling for both present and future cases concerning environmental migration lies primarily in the reasoning adopted by the Court of Cassation, which explicitly draws upon the decision of the United Nations Human Rights Committee in the *Teitiota* case. By relying on this landmark decision, the Court underscored the significant role that the quasi-judicial activity of supranational human rights monitoring bodies may play in shaping and guiding domestic judicial interpretation.⁴¹⁵

The judgement represents a groundbreaking development also from a substantive perspective for two main reasons. First, it introduces a fundamental principle, namely the need to ensure protection for migrants who leave their country of origin as a result of environmental disasters. Second, it confirms the central role of humanitarian protection as a flexible and effective instrument for guaranteeing the protection of climate and environmental migrants in the absence of a specific protection system.⁴¹⁶

⁴¹² Ivi, p.94.

⁴¹³ Court of Cassation, II Civil Section, n 5022, 24 February 2021.

⁴¹⁴ Ibidem.

⁴¹⁵ Perrini F., *Il riconoscimento della protezione umanitaria in caso di disastri ambientali nel recente orientamento della Corte di Cassazione*, cit., p.94.

⁴¹⁶ Ibidem.

3. Takeaways from Regional and National Jurisprudence

Regional systems, such as the Inter-American and European frameworks, have begun to recognize the effects of environmental harm on the enjoyment of fundamental rights, clarifying the obligations of States in this regard. In particular, the Inter-American system has adopted a more structured and principled approach to the integration of environmental protection into human rights law. Through case laws and advisory opinions, the Court has demonstrated a clear willingness to emphasize the link between climate change and human rights violations, for example in its recognition of State responsibility for transboundary harm and in its affirmation that effective human rights protection requires differentiated protection measures for particularly vulnerable groups.

In Europe, neither the European Union nor the Council of Europe have succeeded in developing a comprehensive legal framework. As discussed in previous sections, both systems provide some forms of protection, with the EU relying on legal instruments such as the Qualification Directive, the Temporary Protection Directive, and the Return Directive, and the Council of Europe primarily through the case law of the European Court of Human Rights (ECtHR). However, these mechanisms remain partial and indirect. They were not specifically designed to respond to climate-related mobility and therefore depend on flexible interpretation. As a result, despite these important contributions, Europe still lacks a coherent and forward-looking legal response to the growing phenomenon of climate and environmental migration.

At the same time, the analysis of the experiences of France and Italy has shown that flexibility and judicial innovation can act as important drivers of progress. Domestic courts have the capacity to interpret existing norms in an expansive manner, expanding their scope to also include environmentally displaced individuals. However, these advances have remained case-specific and have not led to the creation of a broader and structured protection framework.

Overall, the regional and national developments examined demonstrate that progress is being made, but that it is mostly driven by judicial intervention once harm has already occurred, rather than by comprehensive and preventive legislative reforms. This has resulted in a system that remains unable to provide consistent and systematic protection to climate and environmental migrants.

CONCLUSIONS

Today, climate and environmental migrants are still not formally recognized. A definition capable of capturing the unique and multifaceted circumstances of this phenomenon has yet to be established, resulting in fragmentation and uncertainty at the international level. This thesis aimed at assessing whether existing legal frameworks and underlying principles of forced displacement can be used, reinterpreted, revised, and consolidated to provide protection now and in the near future. To this end, this work first examined the main relevant international legal regimes, particularly international refugee law, international human rights law, and international environmental law, with the aim of identifying potential avenues for protection.

With regard to international refugee law, the definition of a refugee under the 1951 Refugee Convention has traditionally been subject to a strict textual interpretation, requiring persecution to be linked to at least one of five specific grounds: race, religion, nationality, political opinion, membership in a particular social group. This approach, together with the multicausal nature of environmental migration, and the reluctance of states to expand their protection obligations, has long limited the Convention's applicability to climate-related displacement.

On the other hand, the human rights framework has the greatest potential to address climate and environmental displacement, as it applies to all individuals regardless of their status or the reason for their displacement. Although it makes a significant contribution through the principle of non-refoulement, it still has several limitations, since it does not provide a clear legal status for climate-displaced persons, nor does it guarantee a right to enter or remain in a State, often relying on weak enforcement mechanisms.

Similar challenges are also present in international environmental law. Recent advisory opinions and judicial decisions of the ICJ, ITLOS, and the ECtHR, have clarified that States are obliged to take reasonable and proactive measures mitigate the effects of climate change and protect fundamental rights, based on core principles such as prevention, due diligence and common concern for humankind. However, the key instruments of this regime remain relatively weak. For example, even though the Paris

agreement is legally binding and explicitly refers to the link between human rights and migrants in its preamble, it does not directly address the phenomenon, ultimately focusing on mitigation and adaptation.

Overall, the analysis of the different regimes carried out in the first chapter showed that none provides a sufficiently comprehensive, direct, and coherent framework. As a result, the protection offered remains partial and inadequate to address climate and environmental displacement in a systematic way.

In light of these shortcomings, the analysis then turned to the role of international organizations in strengthening the link between climate change and human rights, with particular attention to the United Nations and the decisions of its treaty bodies in landmark cases such as *Teitiota v. New Zealand*, *Daniel Billy et al. v. Australia (Torres Strait Islanders)*, *Sacchi et al. v. Argentina et al.*, and *Portillo Cáceres v. Paraguay*.

As previously noted, *Teitiota v. New Zealand* marked a turning point in the recognition of climate change as a real and concrete threat to the right to life. In its decision the UN Human Rights Committee established that environmental degradation may, in certain circumstances, render deportation unlawful and therefore clarified the applicability of the principle of non-refoulement under Art. 6 of the ICCPR.

This reasoning was further consolidated in *Daniel Billy et al. v. Australia*, where the Human Rights Committee found that Australia had violated the Islanders' right to private and family life as well as their cultural rights, by failing to take all necessary and appropriate measures to address climate change. This case marked the first time a State was found responsible of violating the fundamental human rights of its citizens in connection with climate-related impacts.

Although not directly concerning climate displacement, *Portillo Cáceres v. Paraguay* also played an important role in consolidating the link between environmental harm and human rights. In this case, the Committee affirmed that States have positive obligations to prevent foreseeable environmental damage that may affect the right to life and private life.

Together, these decisions have demonstrated that there is an evolving jurisprudence and a progressive engagement of UN treaty bodies, with increasing attention being given to climate change as a potential trigger of international human rights responsibility.

In parallel, the International Court of Justice has been central in clarifying the importance of environmental protection, as affirmed in the 1996 Nuclear Weapons advisory opinion, where it stated that the environment represents the living space, the quality of life, and the health of present and future generations. Then, in 1997, in *Gabčíkovo–Nagymaros* it introduced the concept of sustainable development, emphasizing the need to reconcile economic development with environmental protection.

Nonetheless, one of the most significant progresses was made in 2025 with the Advisory Opinion on climate change, in which the Court for the first time directly addressed States' obligations concerning greenhouse gas emissions. It recognized climate change as an urgent and existential threat and affirmed that States have binding obligations under both treaty law and customary international law to protect the climate system. In this opinion, the Court linked environmental protection to human rights, recognizing the right to a clean, healthy and sustainable environment as a precondition for the enjoyment of fundamental rights such as life, health and housing.

Building on these developments, the analysis then moved to the regional and national levels. Given the limited protection for climate and environmental migrants in international law, regional human rights systems, such as the Inter-American Court of Human Rights (IACtHR) and the European Court of Human Rights (ECtHR), have increasingly stepped in to address these gaps by clarifying State obligations and recognizing the impact of environmental harm on fundamental rights.

The Inter-American system is characterized by a particularly proactive approach in linking environmental degradation, climate change and human rights violations. Thanks to landmark cases such as *Sheila Watt-Cloutier et al. v. United States*, environmental harm has been recognized as a human rights issue. Subsequently, the Advisory Opinion n.23 of 2017, and more recently the 2025 Advisory Opinion on the climate emergency and human rights, clarified that climate change may produce cross-border effects. In this context, States can be held accountable for activities carried out within their jurisdiction that cause environmental harm. The Court also emphasized that ensuring the effective protection of human rights requires adopting differentiated measures for groups that are particularly vulnerable and disproportionately exposed to environmental degradation.

In Europe, two distinct legal frameworks address the intersection of human rights, migration, and environmental protection. Within the Council of Europe, the European

Court of Human Rights has progressively recognized that environmental protection is closely linked to the enjoyment of the human rights safeguarded under the ECHR. In fact, in recent judgements, including *Verein KlimaSeniorinnen Schweiz v. Svizzera*, the Court affirmed that States are required to adopt all necessary measures to prevent and mitigate climate-related risks, capable of affecting the right to both private and family as well as the right to health.

Within the European Union, instead, climate and migration policies have developed on separate tracks. Legal instruments such as the Qualification Directive, the Temporary Protection Directive and the Return Directive offer some indirect avenues for protection thanks to a certain degree of flexibility in their interpretation; however, they remain insufficient to fill existing gaps and meet the growing need for an integration of environmental considerations into protection frameworks.

At the national level, the experiences of France and Italy show how domestic courts can play an innovative role in the development of climate and environmental protection. In France, the 2021 judgement known as “Affaire du Siècle” marked a significant step forward, as the Court recognized for the first time the responsibility of the State for climate inaction and imposed both preventive and reparatory measures. Moreover, French courts have started taking into consideration environmental conditions in the countries of origin when assessing applications for asylum or residence permits. A key example of this development is the case of a Bangladeshi citizen exposed to severe air pollution, who was granted protection on the grounds that returning to his country of origin would have posed a serious risk to his health and life. Nonetheless, a formal judicial recognition of who can be considered a “climate migrant” is still absent, and protection continues being granted only in situations of serious and direct threat to health.

Recent years have seen notable developments in Italy as well, despite a politically challenging context. Cases such as *Giudizio Universale* and *Greenpeace v. ENI* demonstrate the growing involvement of the judiciary in defining the responsibilities of the State and of private actors with regard to climate change. The Italian legal system provides different avenues of protection that could be interpreted in ways that offer safeguards to individuals displaced by environmental degradation. However, these possibilities have often been influenced by the political orientation of the government in power, preventing the establishment of stable and lasting protection mechanisms.

Interventions such as the 2019 Salvini Decree, the 2021 Lamorgese Decree and the 2023 Cutro Decree have increased uncertainty, by repeatedly reshaping the legal framework, expanding or restricting migrants' access to protection. In this context, Italian tribunals, including the Court of Cassation, have played a key role, recognizing that environmental degradation may aggravate individual vulnerability and in certain circumstances may justify granting protection, in line with the reasoning developed by international courts in cases such as *Teitiota v. New Zealand*.

Overall, the analysis carried out in this work confirmed that climate and environmental migrants remain largely legally invisible. Despite climate change being an increasingly severe phenomenon, with profound consequences on human lives, including the forced displacement of entire communities, existing legal frameworks still fail to address climate-related displacement in an adequate and proportionate manner. In fact, it was observed that the current system remains fragmented and structurally insufficient. The protection paradox, as Isabel Borges defined it, states that, because some of the dangers of environmental change are intangible and its impacts on human displacement are to some extent invisible today, there is no urgent need to act.⁴¹⁷

Additionally, the rise of conservative and right-wing governments that has been witnessed in recent years in different parts of the world has increased the persistent underestimation, and in some cases even denial, of climate change as a serious and immediate threat. This also reduced the possibility of recognizing climate-related displacement as a ground for protection.⁴¹⁸ The logic becomes circular: if climate change is not acknowledged as a real and urgent problem, there is little incentive to develop legal tools to protect those affected by it. At the same time, these political trends often coincide with restrictive approaches to migration more generally. In many countries, anti-immigrant narratives have gained increasing support, framed migration as a security threat rather than a human rights issue. This dynamic has been particularly visible in Europe and the United States, but similar trends can also be observed in parts of the Global South. As climate change intensifies and contributes to new patterns of displacement, it risks reinforcing these political tendencies, creating a vicious cycle:

⁴¹⁷ Borges, I.M., *Environmental Change, Forced Displacement and International Law*, cit., p.14.

⁴¹⁸ Metz-Lerman J., *Rising seas and rising authoritarianism: Fearful responses to climate migration*, Open Global Rights, 2025.

inadequate climate action leads to greater displacement, which generates more restrictive political responses and reduces the will to adopt effective and rights-based solutions.⁴¹⁹

In this context, two key levels of response are necessary, both preventive and reactive. Anticipatory actions, including disaster prevention and preparedness, adaptation to natural hazards, and planned relocation options for environmentally vulnerable populations, are crucial. On the other hand, a structural commitment to create a forward-looking and coherent legal framework, that does not only rely on the judiciary for fragmented legal interpretations, is essential to prevent the gap between the reality of climate displacement and the law's capacity to respond from continuing to widen.

⁴¹⁹ Ivi, p.101.

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