

CLIMATE MIGRANTS AND THE LIMITS OF REFUGEE STATUS

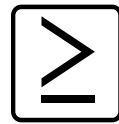
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POLICY STATEMENT

With the end of bipolarism between the USA and USSR, there was a displacement from strategic studies to security studies as well as from the locus of the state to the individual. Conflicts began to occur no longer between states over issues of power, but within states over issues of socio-economic inequality. As a result, threats to human security have gained a new record, having, in recent years, according to the World Migration Report 2020 (1), forced about 272 million people to leave their countries for various reasons. Environmental migration is the one that has contributed most recently to a greater debate in the field of forced migration. Increasingly intense climate change, especially the rise in the average sea level and droughts, has put pressure on the territory and livelihoods of certain states, and may ultimately lead to their disappearance. As a consequence, we see the emergence of migratory flows and an unchecked increase in the number of internally displaced persons and on a global scale. Moreover, threats to human security in a given State are not confined to its physical borders, but have repercussions at the international level. The reality of migration flows thus highlights serious human rights violations, also calling into question principles such as the sovereignty and territorial integrity of states and, even more so, the limits of the Refugee Statute in defending the humanitarian rights of the climate migrant.

BACKGROUND

The post-World War II period was devastating for the entire European continent, not only due to the mass destruction caused by the war, but also due to the presence of totalitarian regimes that attacked life and rights considered inalienable. The reconstruction of Europe depended on the creation of a peaceful environment, conducive to cooperation between different nations, thus avoiding the escalation of new conflicts. Thus, in 1945, one of the largest and most important international organizations was created, the UN. It was within the scope of its competencies that the Universal Declaration of Human Rights was born, consolidating civil and political rights (first generation rights) and social, economic and cultural rights (second generation rights). In the context of an international regime, central to the formulation of dynamics of cooperation, collective planning, disarmament and human rights, among others, the international human rights regime and a framework for the protection of these rights has been constituted and globally recognized based on the values of peace and security, pluralist democracy, good governance and the rule of law (2).



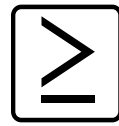
In the range of legal instruments belonging to this regime, at the international level, without prejudice to the others, the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stand out; at the regional level, the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union, the African Charter on Human and Peoples' Rights, among others.

However, to have legal statutes allocated to specialized themes, categories of "sub-regimes" are created, such as the international regime on refugees in the context of migration in the second post-war period. The creation of this regime was born from the need for state cooperation at the level of the administration of the migratory flows(3), although, initially, it was isolated from the international institutions responsible for the control of human mobility. Meanwhile, this regime is no longer compartmentalized, existing an effective refugee regime that "overlaps with a series of other regimes within which States engage in forms of institutionalized cooperation that have a direct and indirect impact on the protection of refugees" (4). This is mainly composed of the 1951 Convention relating to the Status of Refugees and the United Nations High Commissioner for Refugees (UNHCR) whose function is to supervise this same regime, questioned by several theorists, namely regarding its social, humanitarian and apolitical character (5), (6), (7). Nevertheless, there are legal documents that stand out in this regime, such as, besides the aforementioned Convention, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families or the European Convention on the Legal Status of Migrant Workers, the latter with a regional character.

As a result of globalization and interdependence between states, this UN institutional framework has seen a progressive expansion, for example, about human mobility and labour migration. In parallel, it follows an effort by international institutions to strengthen protection instruments in areas such as human rights, humanitarianism, security, development and peacebuilding (4). As such, the fact that many of these institutions may overlap with the traditional refugee regime, by holding complementary protection instruments, may, on the one hand, strengthen and confirm this regime, or, on the other, counteract and undermine it, leading to the use of the term 'refugee regime' no longer making sense. Instead, Betts suggests using the term "'refugee regime complex', in which different institutions overlap, exist in parallel to each other and are nested within each other in ways that shape states' responses to refugees" (4).

Although this legal framework is universal and recognized by almost all states, there are still areas of the globe where they are not accepted and respected, and doubts remain as to their effective implementation. For this reason, conceiving human rights from a universal and absolute point of view, considering that they are not accepted and respected throughout the international system, poses a great challenge as revealed by the phenomenon of forced migrations, specifically those motivated by climate change.

The issue of forced migrations, linked to the urgent need of people to leave their places of origin to survive, has acquired, in recent decades, a new dimension, creating a certain unease in the academic world, especially forced migrations due to climate issues. At stake is the non-existent international recognition and the inadequate protection of International Law. As such, these migrants have been considered humanitarian migrants, protected by internal administrative rules of the countries, without any supervision by International Law. It highlights, on the one hand, the difficulty in



determining the reasons that ultimately lead to environmental migration, given the interconnection with economic and social issues, and, on the other hand, the challenge in devising a universally accepted concept that encompasses all motivations and forms of climate migration.

Although there is no consensual definition, the International Organization for Migration (IOM) adopts the following definition of environmental refugees: "persons or group of persons who, due to sudden or progressive changes in the environment, have been adversely affected in their lives and, due to the conditions they find themselves in, decide or are forced to leave their homes" (8).

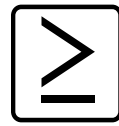
FINDINGS

Caused by climate change, natural changes (violent storms and floods, rising temperatures, water shortages, melting polar icecaps and consequent rising sea levels, among others) and human changes (between 200 and 250 million people in the world will be forced to leave their lands by mid-century, migrating internally or to other countries, largely in the Northern Hemisphere) (9) have occurred mainly since the 1970s. Natural and human changes are interrelated and lead to the need for an analysis of economic, ecological, political and social issues. Climate change, mainly induced by the pattern of industrial consumption and production imposed by developed and industrialized countries, has accelerated many of the natural processes, bringing with it new problems (10). The issues that influence this change, besides being a national problem, should be analyzed from a global perspective - since they are related to the energy matrix and the way human beings relate to nature - also considering North-South relations in a globalized world(9).

The Greenpeace Australia/Pacific 2021 report (11) identifies who is responsible for generating the climate crisis and who must change course to avoid a disaster. Based on 2018 data, the world's top 15 greenhouse gas emitters produce 72.21% of global emissions, while Pacific islands account for 0.23%, with Australia ranked 15th as the largest emitter. It is the developing States - with the lowest greenhouse gas emissions - as well as their respective populations, that are identified as the most vulnerable. However, current debates on environmental issues are no longer restricted to distinguishing between guilty parties and victims, to the extent that the entire international community has its share of responsibility, and all humanity is, in a way, a victim, since a climatic event in one region globally impacts the others (10).

In Latin America, the El Niñoⁱⁱⁱ effect changes the climate of the region and impacts others in the world, implying changes in marine life on the west coast of the USA and Canada and on the coast of Peru; increased rainfall in southern South America and the south-east of the USA; droughts in Northeast Brazil, Central Africa, South-East Asia and Central America and tropical storms in the Central Pacific.

In the case of Central America, thousands of people may be left without food due to drought and hurricanes, having direct repercussions on migration to the US. In Brazil, in 2018, around 86,000 people were forced to relocate. Mostly due to the floods at the beginning of the year. According to the Forced Migration Observatory, developed by the Igarapé Institute (12), in the last 18 years, more than 6 million Brazilians have been forced to relocate due to natural disasters such as torrents, storms and floods. Regarding the spatio-temporal nature of droughts in the Northeast, the National



Centre for Monitoring and Alerts of Natural Disasters showed that between 2002 and 2017, more than 24 million Brazilians in the region were forced to leave their homes due to the problem of drought (13).

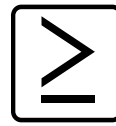
In South Asia, the monsoon period (seasonal winds) will wreak havoc, such as torrential rains, devastating rice crops and causing soil erosion. This is the case of Bangladesh, which could have 13 million migrants by 2050 due to the advancing sea (13). As well as entire cities being submerged like Mumbai in India and Hochi Minh in Vietnam (13).

In sub-Saharan Africa, an estimated 86 million people will be forced to leave their land. The humanitarian consequences of climate change are clear. One is changing disease patterns, such as increased cases of malaria due to flooding and overtopping of hillsides. With the loss of crops and the death of livestock, malnutrition for people will become a reality, especially for children. Places like Ethiopia and parts of Somalia, where people are always on the move because of conflict, will still have to leave their homes as well because of the impacts of climate change causing droughts and floods. In 2019, thousands of people left their homes because of this combination of climate change and armed conflict, leading to a higher degree of vulnerability and consequently increased humanitarian needs^{iv}.

In the case of the Pacific Islands, ocean warming has resulted in more intense tropical hurricanes, and more severely devastating low-lying communities. In March 2015, Cyclone Pam affected almost half of Vanuatu's population and destroyed 95% of crops in the affected areas. A year later, Cyclone Winston caused \$470 million worth of damage in Fiji, about 10% of that nation's GDP (11). In April 2020, Cyclone Harold devastated the Solomon Islands, Vanuatu, Fiji and Tonga (11). According to the rapporteurs Čašule & Jiva (11), island countries and their peoples, more than anywhere else in the world, will suffer from rising sea levels, higher super tides, increased flooding, erosion of coastlines, ocean acidification and increased salinity of water tables, habitat destruction and relocation of villages.

It is believed that in the coming decades rising sea levels will create more than 20 million climate refugees. At least ten countries may disappear because of climate issues. In Oceania, the Marshall Islands, Nauru, Kiribati, Tuvalu, Samoa, Fiji and Solomon Islands. In Asia, Bangladesh and the Maldives. In the Pacific Ocean, the island of Vanuatu. As a result, these people will leave their countries and become stateless (14), as their territories will no longer exist^v. We are faced with a legal framework that is distinct from that of refugees, but with equally challenging implications in terms of international protection.

The climate vulnerability of several countries and their populations thus places climate refugees at the centre of human rights concerns. Effectively, the situation will have a boomerang effect, since the polluting actions of the most developed countries will imply obligations towards climate refugees, largely coming from countries with more sustainable lifestyles.



CONCLUSIONS

Human activities related to production throughout the world contribute significantly to the scenario of alterations to the climate system, to the extent that such modifications have become dangerous for human survival itself. However, so far there is no satisfactory legal solution to the problems caused by the displacement of populations (groups or individuals) who migrate internally or to other countries due to the effects of climate change. The legal status and rights of these populations are not established in international texts - Conventions or Agreements, which leads us to conclude that a) they are not recognized as a new category of refugees because it is not possible to equate them with war or political refugees and they do not have a status that protects them, although reality indicates that their number tends to grow; b) they are also not recognized as a new category of populations in an additional protocol to the Climate Convention, or simply as a new category of a new international treaty; c) or even as a new category of migrant, the ecomigrants (9).

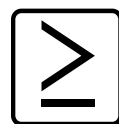
RECOMMENDATIONS

To protect those who are fleeing or will flee from environmental disasters and degradation that make it impossible for them to live in their respective countries or places of habitual residence, it is recommended that:

- create and adopt an international document, within the UN (through its bodies or the UNHCR itself, for example), that would define the concept of environmental refugee, its characteristics, principles, limits and legal scope of application (8).
- negotiate a new Convention and, therefore, terminological adequacy from the prism of human rights or specifically of climate change through the improvement of the existing international legal mechanisms for the construction of guiding principles to deal with this new category of displaced people (9).
- discuss the protection aimed at all forms of forced human displacement due to environmental factors or catastrophes to contemplate the various displacements linked to environmental and climatic issues.

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ⁱⁱⁱ El Niño is the biggest global climate phenomenon: from time to time, a huge amount of water from the Equatorial Pacific Ocean warms up, changing the regime of the trade winds. This heat wave at sea is called El Niño (The Child) because it usually appears at Christmas time. INPE/CPTEC: 2015. Available at <https://memoria.ebc.com.br/infantil/voce-sabia/2015/09/o-que-sao-os-fenomenos-el-nino-e-la-nina>.

^{iv} Band Journalism (2022). *Global Warming: Meet the Climate Refugees*. Available at <https://www.youtube.com/watch?v=dcm7mLNiZZw> [accessed September 5, 2022].

^v Stateless persons are considered to be those who, for different reasons, are without a country of origin or nationality, in most cases undocumented, without a guarantee of permanence and access to rights in the country they intend to adopt (14) and therefore in conditions of high vulnerability. In the case of stateless persons due to climate issues, there is the enigmatic case of the Kiribat government, a country composed of 33 islands in the middle of the Pacific, which bought land in the neighbouring country, Palau, to migrate its population of 100,000 inhabitants (13). In this case, they will be documented stateless persons, but without the territory which gave them their identity and Kiribati nationality.