



## An Inquiry on the Legal Status and Protection of Climate Refugees from an International Law Perspective

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### Abstract

Climate crisis-related displacement is one of the most prominent issues in our world. Although, there is no given legal definition for climate refugees in any international legal convention, in order to analyse this phenomenon; those who are compelled to leave their homes due to climate change-related catastrophes would be accepted as climate refugees within this article.

It is clear that climate refugees, who sit at the crossroads of climate change and the refugee crises, can only be adequately protected through a combination of climate action and refugee rights. The climate crisis is a substructure of the refugee crisis. Therefore, climate action, which is principally aimed at solving substructural problems, is essential for solving the superstructural climate refugee crisis. Nevertheless, according to scientific predictions, even the most optimistic scenarios foresee a considerable change in the climate. Hence, even the most optimistic scenarios in which humanity takes climate action may not be enough to prevent the existence of climate refugees.

The Refugee Convention Relating to the Status of Refugees, which is currently the most prominent international convention on refugee rights, does not encompass climate refugees because of its contingent wording. Thus, it is necessary to adopt comprehensive legislation that protects the rights of climate refugees in addition to climate action that would reduce the number of possible refugees. Yet both substructural and superstructural issues are in a position of conundrum due to the extant international political and legal system, which prioritises the national sovereignty and states consents. Consequently, legal solutions in the sense of both climate and refugee crises fall short if the international political and legal status quo is ignored.

### Keywords

Climate Refugees, Climate Crisis, Refugee Crisis, Refugee Convention, National Sovereignty, Complementary Protection

### Uluslararası Hukuk Bakış Açısından İklim Mültecilerinin Hukuki Konumu ve Korunmasına İlişkin Bir İnceleme

### Öz

İklim krizi neticesinde yerinden edilme olgusu günümüz dünyasının en temel sorunlarından biridir. Ancak, iklim mültecisi ifadesi herhangi bir uluslararası hukuk sözleşmesinde tanımlanmamaktadır. Dolayısıyla bu olgunun incelenebilmesi amacıyla bu çalışmada, "yurtlarını iklim değişikliğine bağlı felaketler sebebiyle terk etmek zorunda kalan kimseler" iklim mültecisi olarak kabul edilecektir. Bu nedenle, iklim krizi ve mülteci krizinin kesişme noktasında bulunan iklim mültecilerinin, iklim eylemi ve mülteci haklarının bir kombinasyonu ile yeterli ölçüde korunabileceği açıktır. Böylelikle iklim mültecileri bağlamında iklim krizi, mülteci krizinin alt yapısı konumundadır. Dolayısıyla temelde alt yapı sorununu

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**To cite this article:** Candoğan A, Kayhan MB, "An Inquiry on the Legal Status and Protection of Climate Refugees from an International Law Perspective" (2024). *Istanbul Hukuk Mecmuası* xx. <https://doi.org/10.26650/mecmua.2024.82.4.0001>



çözmeyi hedefleyen iklim eylemi, üstyapısal konumdaki iklim mülteciliği sorununu çözmek için elzemdir. Bununla birlikte, bilimsel tahminlere göre en iyimser senaryolarda da iklimde önemli bir değişiklik meydana geleceği öngörülmektedir. Dolayısıyla, insanlığın iklim eylemini başarıyla yürüttüğü en iyimser senaryolar dahi iklim mültecilerinin var olmalarının önüne geçilemeyebilir.

Günümüzde, mülteci hakları bağlamında en önemli uluslararası düzenleme olan 1951 tarihli Cenevre Mülteci Sözleşmesi ise lafzî kısıtlılığı sebebiyle iklim mültecilerini kapsamamaktadır. Bu nedenle, olası mülteci sayısını azaltacak bir iklim eyleminin desteklenmesiyle birlikte iklim mültecilerinin haklarını koruyacak kapsamlı bir mülteci mevzuatının oluşturulması gerekmektedir. Trajik bir biçimde, ulusal egemenlikleri ve devletlerin rızalarını ön planda tutan mevcut uluslararası siyasi ve hukuki sistem nedeniyle hem altyapı hem de üstyapı sorunları bir kördüğüm konumundadır. Sonuç olarak, uluslararası siyasi ve hukuki statükunun göz ardı edilmesi halinde hem iklim krizi hem de mülteci krizi anlamında önerilecek hukuki çözümler yetersiz kalacaktır.

#### **Anahtar Kelimeler**

İklim Mültecileri, İklim Krizi, Mülteci Krizi, Mülteci Sözleşmesi, Ulusal Egemenlik, İkincil Koruma

### ***Extended Summary***

Climate refugees can be defined as people who are compelled to leave their homes due to climate change-related reasons. As can be understood from the description, the problems that climate refugees (would) face stem from two different but intermingled crises. Namely, the climate crisis and the refugee crisis. Although these two crises have set different obstacles for climate refugees, they are nevertheless related; since the climate crisis constitutes the substructure for the climate refugees. Thus, taking climate action is crucial for reducing the number of possible climate refugees. This structural approach to addressing climate refugees would protect them, even before they become climate refugees, by eliminating the substructure, which would give rise to the superstructure of climate refugees.

Nevertheless, an increase in average global temperatures is foreseen even in the most optimistic scientific scenarios that assume the possibility of a relatively successful fight against climate change. Therefore, it is only reasonable to assume that climate refugees will become a part of the future. As a result, these people would need protection in the context of refugee rights. Thus, it is necessary to focus on both the climate crisis and refugee rights to offer a comprehensive solution.

In order to deal with the substructure of the climate refugee issue, namely, the climate crisis, two main sets of solutions are suggested in this paper. The first set consists of international agreements aimed at combating the climate crisis. The Paris Agreement (2015) and the Kyoto Protocol (1997) are the two most prominent of those agreements. Although the agreements have been accepted quite widely; they both suffer from issues such as lack of an effective enforcement mechanism, lack of a supranational authority that would monitor the parties and implement the agreement directly, the principle of voluntariness in becoming a party to the agreements, freedom to withdraw from the agreements without any sanctions, and, finally, lack of

any real sanction regarding failure to comply with the agreements. The flaws in both agreements stem from the paradigm of national sovereignty that enshrines states' will and consent. Since it is quite unlikely that 193 member states of the United Nations will agree to take the same climate action, humanity's fight against climate change is in constant jeopardy. Although public opinion favours climate action, people's opinions do not seem to affect state policies either. The second set of solutions can be described as the "technological solutions" which refers to technologies, such as carbon capture technology, that are aimed at combating climate change. Unfortunately, these technologies are incapable of replacing the legal and political set of solutions before reaching a tipping point, resulting in an irreversible climate catastrophe.

To deal with the superstructure of climate refugees, international refugee law must be examined, despite the fact that there is no legal definition of climate refugees in international law. The Refugee Convention Relating to the Status of Refugees (hereinafter, Refugee Convention), the most prominent document on the subject, not only lacks a definition for climate refugees but also does not provide climate refugees with the status of refugee; since the term "refugee" in the agreement can only be applied to those who are persecuted on a political basis. Nevertheless, climate refugees tend to suffer from natural causes rather than political causes. Therefore, it is necessary to draft a new refugee convention or an annexe to the Refugee Convention to transcend the convention's narrow scope and protect climate refugees. Unfortunately, even if there were more comprehensive legal terms for climate refugees; considering the lack of enforcement in international law, they could not provide real protection. Thus, issues surrounding climate refugees, both in the context of refugee rights and the climate crisis, constitute a conundrum because of the current international legal and political status quo.

## Introduction

“In which category shall this article be included; law, sociology, politics, or maybe climatology?” one might ask after reading this article. The answer, which the writers of this article sincerely propose, is “all of them.” Although this answer might be evaluated as a vulpine answer that tries to avoid the question, it reflects the reality of the “climate refugees” quite accurately. Climate refugees are at the crossroads of various domains, such as the climate crisis, refugee crisis, international relations, public international law, human rights, national politics, and many other issues and disciplines that would be included on the list. Even though such a broad classification might seem like a gargantuan task at the first glance; it is nevertheless out of necessity, since a narrow perspective on the issue might result in ignoring its complex nature. While such a multi-disciplinary and structural approach towards the social phenomena is nothing new in the social sciences as one can observe in the works of giants like *Fernand Braudel* and *Karl Marx*; for those who believe in the purity of law, any work that is aimed at understanding legal issues (such as the legal status of refugees or climate agreements) shall exclude “non-legal” elements of those issues. This *idealist* approach transforms law into an algebra of logic that exists only in an interlegal cartesian universe. Thus, not only the material and social substructures (such as geography, economics, culture, and politics) are ignored by this approach, but the humans who fictionalise and implement the law are also reduced to insignificant perceivers of the platonic *idea* of law.

This idealist approach shall be transcended to comprehend the exceptionally versatile nature of climate refugees. Therefore, different aspects of the issue have become the subjects of this paper. Not only the legal aspect of the issue is under scrutiny in the article; but also, the climate reality, which created the necessity to seek refuge, and the political system(s) that prevent people who are (and will be) affected by the climate crisis from reaching a safe haven. As will be explained in this article, in addition to the lack of a definitive legal status for climate refugees, the *reelpolitik* hinders them from enjoying the extant legal protection that can be observed in the current refugee crisis in Europe.<sup>1</sup> Thus, solely focusing on the legal dimension and ignoring the other dimensions of climate refugees will result in an *intellectual fordism* and a bunch of cumbersome legal definitions which entail little to no actual protection for climate refugees. To avoid this unfortunate fate; the two goals of this article are to first detect the problems that climate refugees face and then discuss possible solutions to these problems.

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<sup>1</sup> A significant but tragic example of this reality is the refugees, who are violently and systematically pushed back by the Greek authorities. See, Birgitta Schülke-Gill and Julia Bayer, “Greece: Refugees attacked and pushed back in the Aegean” (Deutsche Welle 29 June 2020) <<https://www.dw.com/en/greece-refugees-attacked-and-pushed-back-in-the-aegean/a-53977151>> Date of access 04 November 2021; Florian Schmitz, Alexia Kalaitzi and Burcu Karakas, “Migrants accuse Greece of forced deportations” (Deutsche Welle 21 May 2020) <<https://www.dw.com/en/migrants-accuse-greece-of-forced-deportations/a-53520642>> Date of access 04 November 2021.

In light of the issues mentioned above, the first part of this article is dedicated to the examination of the fundamental problems which are the underlying reasons behind the climate refugees. After examining and detecting the fundamental problems, the existence and quality of the current legal status of climate refugees will be scrutinised. Ultimately, some possible solutions that could ameliorate the situation of climate refugees will be discussed.

## I. Fundamental Problems

In order to analyse the legal status and protection of climate refugees in international law, the fundamental problems shall be examined first. In that sense, first, the climate crisis, which is the primary reason for the climate refugees, then the phenomenon of the refugee crisis and the climate refugees will be analysed.

### A. Climate Crisis

#### 1. The Nature-Human Relationship

When the relationship between nature and humankind is under scrutiny, the only enigmatic thing is not only the question itself but also humans' role in this relationship. Throughout history, this role has been defined by various belief and thought systems.

##### a. Down to Earth: From Divine Rulers to Primates

For some monotheistic religions, such as Christianity and Islam, an anthropocentric teleology is inherent in the existence of nature. This paradigm is expressed in the Holy Bible as follows:

*“Then God said, “Let us make humankind in our image, according to our likeness; and let them have dominion over the fish of the sea, and over the birds of the air, and over the cattle, and over all the wild animals of the earth, and over every creeping thing that creeps upon the earth.” (Genesis-1:26)<sup>2</sup>*

The same paradigm appears in the Holy Quran:

*“He is the one who has subjugated the sea, so that you may eat fresh meat from it, and may take out from it ornaments you wear, and you see the boats cleaving through it, and so that you may seek his bounty, and that you may be grateful.” (An-Nahl-14)<sup>3</sup>*

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<sup>2</sup> “New Revised Standard Version Bible”, (Bible Gateway) <<https://www.biblegateway.com/passage/?search=Genesis+1%3A26&version=NRSV>> Date of access 30 September 2021.

<sup>3</sup> “The Quran”, Mufti Taqi Usmani (trans.) (Quran.com) <<https://quran.com/16/14?translations=43,101,20,84,21,17,19,95,22,18>> Date of access 30 September 2021.

According to the aforementioned major abrahamic religions, humans are both rulers and *raison d'être* of the universe through divine will. Moreover, the scientific consensus of the time was also approving that perspective. Until the scientific revolution that took place in the sixteenth and seventeenth centuries in Europe, the Aristotelian geocentric view, which assumed that the earth (and so is humanity) is at the centre of the universe, was prevalent. While the world has become just an ordinary planet in the universe because of the theories which were proposed by the scientists such as Galileo, Copernicus, and Newton; humankind has become an ordinary species on this ordinary planet because of the theory of evolution.<sup>4</sup>

### **b. Becoming a Major Force: Anthropocene**

Humans have transformed the earth by using fire, cutting down trees, farming, and in many other ways. While many megafaunas and their species were destroyed in the process;<sup>5</sup> species such as weeds, chickens, and sheep were domesticated and spread worldwide. This trend of alteration has reached a remarkable acceleration by some momentous events such as geographical explorations and the industrial revolution.<sup>6</sup>

This acceleration became even more significant by the mid-twentieth century. In fact, this significant acceleration of human effects on nature after 1945 was described by McNeill and Engelke as “the great acceleration” by McNeill and Engelke.<sup>7</sup> Nevertheless, what has changed by the mid-twentieth century is not only the magnitude of humanity’s impact on nature but also our perspective on this very impact. This human impact is so significant that it is now accepted as an overwhelming force<sup>8</sup> in the “world system.”<sup>9</sup> Therefore, scientists now use the term “anthropocene” to explain the overwhelming influence of humanity on earth. According to the Oxford English Dictionary, the term anthropocene means: “*the epoch of geological time during which human activity is considered to be the dominant influence on the environment, climate, and ecology of the earth, a formal chrono-stratigraphic unit with a base which has been tentatively defined as the mid-twentieth century.*”<sup>10</sup>

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<sup>4</sup> Erle C. Ellis, “*Anthropocene: A Very Short Introduction*” (Oxford University Press 2018) 6-11.

<sup>5</sup> Ibid 79-83.

<sup>6</sup> J. Donald Hughes, “*An Environmental History of the World*” (Routledge 2009) 117-120.

<sup>7</sup> John McNeill and Peter Engelke, “*The Great Acceleration: An Environmental History of the Anthropocene since 1945*” (Harvard University Press 2016) 4-6.

<sup>8</sup> Will Steffen, Paul Crutzen and John McNeill, “*The Anthropocene: Are Humans Now Overwhelming the Great Forces of Nature?*”, (2007) 36(8) *Ambio* 614.

<sup>9</sup> The term “world system” refers to: “...the suite of interacting physical, chemical and biological global-scale cycles and energy fluxes that provide the life-support system for life at the surface of the planet.”; *ibid* 615.

<sup>10</sup> Oxford English Dictionary, “*Definition of 'Anthropocene'*”, <<https://0-www-oed-com.libunix.ku.edu.tr/view/Entry/398463?redirectedFrom=anthropocene%27#eid>> Date of access 03 October 2021.

Although the term anthropocene made its way into dictionaries, it is criticised or even refused due to various reasons in some academic circles by multiple disciplines.<sup>11</sup> Nevertheless, regardless of the controversies surrounding the term anthropocene, the major human impact on nature is proven by the abundant amount of scientific research. Consequences of human activity can be observed nearly in every corner of the planet because of issues related to climate crisis, the hole in the ozone layer, acidification of water, and carbon emissions.<sup>12</sup>

### **c. Bilateral Nature of the Human- Environment Relationship**

In his bestseller book, Yuval Noah Harari claims that “*We did not domesticate wheat. It domesticated us. The word ‘domesticate’ comes from the Latin domus, which means ‘house’. Who’s the one living in a house? Not the wheat. It’s the Sapiens.*”<sup>13</sup> This claim is remarkable since it reflects the bilateral nature of the relationship between the environment and humans. Humanity’s intermingled history with the environment is a versatile one. As humans have shaped the environment in many ways, the environment has shaped humans’ ways of living and existence in an essential sense.

Nevertheless, humans are not the only species that have profoundly shaped the Earth. Actually, one of the main reasons why humans evolved as a species is a direct result of such a situation. Namely, “*the great oxygenation event*” (GOE).<sup>14</sup> The high percentage of oxygen in the earth’s atmosphere is related to the activities of some photosynthetic organisms’ (mainly cyanobacteria).<sup>15</sup> As a result of photosynthesis, these organisms produce oxygen as an output. Although high levels of oxygen are key to survival for humans and many other contemporary species; the process of oxygenation was catastrophic for species that had evolved in accordance with low oxygen atmospheric conditions. Thus, many species of the time have gone extinct.<sup>16</sup> Ultimately, the very cyanobacteria that had vastly contributed to the GOE were affected by the GOE. The catastrophic results of the GOE demonstrate that when a species (or several species) becomes an overwhelming force of nature, it might become a victim of a trend led by that species.

Humans, as a great force of nature, now overwhelmingly alter the earth. Today, there is a consensus among scientists over a forthcoming climate catastrophe, which

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<sup>11</sup> Ellis (n 4) 3, 140-141.

<sup>12</sup> Ibid 29-32.

<sup>13</sup> Yuval Noah Harari, “*Sapiens: A Brief History of Humankind*” (McClelland & Stewart 2014).

<sup>14</sup> Ellis (n 4) 20.

<sup>15</sup> Bettina Schirrmeister, Muriel Gugger and Philip Donoghue, “*Cyanobacteria and the Great Oxidation Event: evidence from genes and fossils*” (2015) 58(5) *Palaeontology* 769, 769-770.

<sup>16</sup> Malcolm Hodgskiss, Peter Crockford, Yongbo Peng, Boswell Wing and Tristan Horner, “*A productivity collapse to end Earth’s Great Oxidation*” (2019) 116(35) *PNAS* 17207, 17211-17212

is mainly due to human activities.<sup>17</sup> Thus, it is possible that humans may become victims of a process that is tragically caused by humans.

## 2. Current and Possible Outcomes of the Climate Crisis

In the context of the anthropocene; it is not only possible to observe humanity's destructive impact on nature but also possible to observe nature's destructive impact on humanity. Thus, human effects on the ecosystem, in turn, affect humans again because they are also part of this ecosystem. One of the most significant facts about this situation is the climate crisis. Climate crises manifest in various ways, such as rising temperatures, heat waves, rising water levels, and acidification of the water resources; and these issues contain the potential to entail many other problems for humans. Falling agricultural productivity, water levels that would rise above cities and set them underwater, the jeopardy of food and water security, and related terrorist activities are some of these problems.<sup>18</sup>

What makes the climate crisis worth discussing today is that it is not only a catastrophe for the future but also a current set of problems with various consequences. Moreover, due to this great acceleration, we have been facing some of these consequences for half a century. According to the United Nations (UN) Climate Report 2021: *“Each of the last four decades has been successively warmer than any decade that preceded it since 1850. Global surface temperature<sup>8</sup> in the first two decades of the twenrt-firstt century (2001-2020) was 0.99 [0.84- 1.10] °C higher than 1850-19009. Global surface temperature was 1.09 [0.95 to 1.20] °C higher in 2011– 2020 than 1850–1900, with larger increases over land (1.59 [1.34 to 1.83] °C) than over the ocean (0.88 [0.68 to 1.01] °C)”*.<sup>19</sup> More vehemently, in the report it is expressed that *“Human influence has warmed the climate at a rate that is unprecedented in at least the last 2000 years”*.<sup>20</sup> In addition to all the issues above, many other human-related environmental problems (such as extreme heatwaves and cold waves, high CO<sub>2</sub> concentration, retreating glaciers, rising sea levels, droughts, and wildfires)<sup>21</sup> are expressed in the report.

In the report, in addition to the current trends and problems mentioned above, predictions regarding the future of climate change are made. The predictions are classified into three consecutive timelines: namely “near term”, “mid-term”, and

<sup>17</sup> National Aeronautics and Space Administration (NASA), “*Scientific Consensus: Earth’s Climate Is Warming*” <[https://climate.nasa.gov/scientific-consensus/#footnote\\_1](https://climate.nasa.gov/scientific-consensus/#footnote_1)> Date of access 10 October 2021.

<sup>18</sup> UN, “*The Climate Crisis – A Race We Can Win*” <<https://www.un.org/en/un75/climate-crisis-race-we-can-win>> Date of access 27 May 2021.

<sup>19</sup> UN, “*Climate Change 2021: The Physical Science Basis*” (2021), 5 <<https://www.ipcc.ch/report/sixth-assessment-report-working-group-i/>> Date of access 09 October 2021.

<sup>20</sup> Ibid 7.

<sup>21</sup> Ibid 9-11.



finally “long term”. Predictions for all three timelines vary depending on the quantity of carbon (CO<sub>2</sub>) and other greenhouse gas emissions. Nevertheless, regardless of emissions, it is predicted that global surface temperatures will continue rising until the mid-twenty-first century. The best estimate for the near term (2021-2040) constitutes a rise in surface temperature from 1.5°C to 1.6°C. The best estimate for the mid-term (2041-2060) constitutes a rise in surface temperature from 1.6°C to 2.4°C. Finally, The best estimate for the long term (2081-2100) is a rise in surface temperature from 1.4°C to 4.4°C.<sup>22</sup>

Considering the above-mentioned predictions, one might question the necessity of taking action immediately because some very long timelines exist, such as 2081 or 2100. Again, one might assert that in order to prevent the worst-case scenario for the long term, taking action from 2050 would be enough. Unfortunately, humanity is running out of time in order to avoid climate catastrophe due to the possibility of reaching “tipping points”. Here, a tipping point refers to “a critical threshold beyond which a system reorganises, often abruptly and/or irreversibly.”<sup>23</sup> Thus, once reached, tipping points will make it impossible to prevent or control climate catastrophe.

An excellent example of a tipping point in the context of climate change is the melting of Arctic ice sheets and glaciers.<sup>24</sup> Since the light colour palette of earth’s polar ice pack reflects sunlight very effectively, loss of the polar ice pack means a darker colour palette (due to the darker colours of earth, sea, and moss), which in turn creates terrain that reflects sunlight less efficiently. When a terrain cannot reflect sunlight, it gets warmer; then more ice and snow melting. Ultimately, due to the decreasing number of ice packs, the entire process constantly repeats until no ice packs are left. When the world loses its ice sheet, it will most certainly be a warmer place. Therefore, reaching a certain loss in ice sheets and glaciers would mean a point of no return. Such processes are called “positive feedback systems”, and the world is full of them<sup>25</sup>. Reaching a tipping point would trigger a positive feedback system, which, in turn, would constitute a point of no return. Consequently, it is crucial to take action before reaching such a point.

In addition to calling for action, some take a step further and calculate the number of years left to avoid a complete defeat by climate catastrophe. For example, UN General Assembly President María Fernanda Espinosa Garcés expressed that “*We are the last generation that can prevent irreparable damage to our planet*” and stated that only eleven years are left to prevent a catastrophe.<sup>26</sup> Nevertheless, despite calls

<sup>22</sup> Ibid 16-19.

<sup>23</sup> Ibid 28.

<sup>24</sup> Ibid 29-36.

<sup>25</sup> Ellis (n 4) 19.

<sup>26</sup> UN, “*Only 11 Years Left to Prevent Irreversible Damage from Climate Change, Speakers Warn during General Assembly High-Level Meeting*” (2019) <<https://www.un.org/press/en/2019/ga12131.doc.htm>> Date of access 11 October 2021.

to arms by various politicians and environmental activists<sup>27</sup> and growing public awareness<sup>28</sup> regarding the climate crisis, the world's political and legal system(s) seems reluctant or inadequate to take action. As will be discussed in the last chapter, there are different sets of problems in the fight against the climate crisis.

## B. The phenomenon of Refugee Crisis

Humanity has migrated for various reasons throughout history. Homo Sapiens have a deep and complex history of seeking refuge for multiple reasons, originating back in Africa.<sup>29</sup> In other words, environmental disasters, conflicts, or slow-onset environmental degradation have displaced people, and this fact does not seem to be changing. What is new is the consequences and the label given to the reasons for migration.<sup>30</sup> Out of a legal context, refugees began to be classified as climate refugees, economic refugees, etc. Furthermore, “refugee” became a legal status that entails several rights and entitlements. In a sociological context, the notion of a refugee refers to “*a person who has been forced to leave his or her home and seek refuge elsewhere, esp. in a foreign country, from war, religious persecution, political troubles, the effects of a natural disaster, etc.; a displaced person.*”<sup>31</sup> However, this is not the case when it comes to legal status.

The notion of a refugee as a legal term in international law has been defined, and the rights and entitlements it entails are set out under the Refugee Convention. When we read the definition of a refugee under Article 1/A-2 of the Refugee Convention in conjunction with the 1967 Protocol, a refugee is;

*“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”*<sup>32</sup>

<sup>27</sup> Famous teenage activist Greta Thunberg and “The Climate Clock Movement” are some significant examples of an ever-growing body of environmental activism.

<sup>28</sup> United Nations Development Programme (UNDP), “*World’s Largest Survey of Public Opinion on Climate Change: A Majority of People Call for Wide-Ranging Action*” (2021): “UNDP’s “Peoples’ Climate Vote” reflects over half the world’s population after results processed by the University of Oxford. Sixty-four percent of people believe climate change is a global emergency, despite the ongoing COVID-19 pandemic” <<https://www.undp.org/press-releases/worlds-largest-survey-public-opinion-climate-change-majority-people-call-wide>> Date of access 11 October 2021.

<sup>29</sup> Axel Timmermann and Tobias Friedrich, “*Late Pleistocene climate drivers of early human migration*” (2016) 538 Nature 1, 1-3.

<sup>30</sup> Alice Edwards, “*Interational Refugee Law*” in Rosemary Rayfuse and Shirley v. Scott (eds.), *International Law in the Era of Climate Change* (Edward Elgar Publishing 2012) 58, 61.

<sup>31</sup> Oxford English Dictionary, “*Definition of ‘Refugee’*”, <<https://www.oed.com.libunix.ku.edu.tr/view/Entry/161121?rskey=KQZhg&result=1&isAdvanced=true#firstMatch>> Date of access 15 September 2021.

<sup>32</sup> Convention relating to the Status of Refugees, (adopted on 28 July 1951, entered into force 22 April 1954) Article 1/A-2, read in conjunction with Protocol relating to the Status of Refugees (adopted in 31 January 1967, entered into force 4 October 1967).

This definition puts several limitations for forcibly displaced individuals to obtain refugee status. Regarding those limitations, the definition extends only to those who flee their country for somewhat political-related persecution or risk of persecution. According to Edwards, the drafters of the Refugee Convention were aware that there would be others who were forcibly displaced for reasons other than political persecuting. Still, they were prepared to protect only the politically persecuted ones at that time.<sup>33</sup>

As a result of this limited implication of internal protection provided to those who are forcibly displaced, it is fair to assume that international law recognises only a small proportion of forcibly displaced people, as other countries are obliged to protect.<sup>34</sup> The United Nations High Commissioner for Refugees (UNHCR) database reveals that at the end of 2020, there were 82.4 million people forcibly displaced across the world, and only 26.4 million of them have the “refugee” status.<sup>35</sup> Considering the human population in the world, one may assert that the number of people who are not under international protection is relatively low, but this is because those statistics can be misleading. Statistics have revealed that the most considerable portion of the forcibly displaced people are moving within their national borders (Internally Displaced People-IDP) and are not entitled as refugees under International Refugee Law. The IDP figures are those that the UNHCR could count. However, citizens in most countries have the right to move freely within the state’s borders<sup>36</sup>, and most natural disaster-related movements are expected to be internal.<sup>37</sup> Thus, it is fair to assume that there are also invisible people who have been forcibly displaced, and the statistics would not reflect their existence. Moreover, the decision-making process regarding migration is directly related to the socio-economic status of those concerned. People from lower-income classes and vulnerable groups are likely to stay put because they may not have the financial ability or social networks to move.<sup>38</sup>

In a nutshell, it is to remind people that there is a “*dark side of the moon*” and the statistics do not reveal the significant number of people who are not able to move.<sup>39</sup>

<sup>33</sup> Edwards (n 30) 81.

<sup>34</sup> Jane McAdam, “*Climate Change, Forged Migration, and International Law*” (Oxford University Press 2012)1.

<sup>35</sup> The UN Refugee Agency (UNCHR), “*Global Trends Forced Displacement in 2020*”, 2 <<https://www.unhcr.org/60b638e37/unhcr-global-trends-2020>> Date of access 15 September 2021.

<sup>36</sup> See Article 12/1 of the International Covenant on Civil and Political Rights (ICCPR) (Adopted on 16 December 1966, entered into force 23 March 1976).

<sup>37</sup> Nuray Ekşi, “*İklim Mülteciliği (Climate Refugees)*” (2016) 2(2) The Journal of Migration Studies 10, 19; McAdam (n 34) 5.

<sup>38</sup> McAdam (n 34) 20-21.

<sup>39</sup> Some authors use the notion of “trapped populations” to refer to individuals. Nükhet Yılmaz Turgut, “*Çevresel Göç ve Çevre Göçmenleri Sorununun Çevre Hukukundaki Yeri (The Place of Environmental Migration and Environmental Migrants in Environmental Law)*” (2018) 31(139) Union of the Turkish Bar Associations Review 287, 308-309.

Moreover, the statistics indicate that the number of forcibly displaced people has dramatically increased over the last decade<sup>40</sup> and is expected to increase. Therefore, it is clear that immigration is becoming an even more critical problem in our contemporary world. Regarding this fact, it must be accepted that there should have been another reason than armed conflicts or economic crises, which caused even more internal or international movements than there had been.

Recent studies have revealed that the climate crisis is associated with a rising number of refugees.<sup>41</sup> It is assumed that the climate crisis triggers several factors that force people to move. Thus, the relationship between climate crises and refugees will be examined in the next chapter. However, before moving to this subject, it should be underlined that there are two sides to the refugee crisis. Although the growing number of forcibly displaced people indicates an ongoing crisis around the world, it also triggers nationalist and populist movements within the host countries. Thus, anti-refugee movements and xenophobia played an essential role in the rise of populist rights in countries like Hungary or Poland<sup>42</sup> and in the Brexit referendum in the UK.<sup>43</sup>

That is to say, increasing refugee numbers triggers right-wing populist movements in host countries. While the right-wing populist movements have a negative impact on greenhouse gas emissions<sup>44</sup> and consequently deepen the climate crisis, it is assumed that the climate crisis will increase the number of refugees. Thereby, it is, unfortunately, fair to imagine a profoundly worrying scenario in which there would be a positive feedback cycle between right-wing populist movements, the climate crisis, and immigration. Moreover, right-wing populist movements not only deepen the crisis but also undermine the existing international human rights system.<sup>45</sup> Güneş and Çelenk reached a similar conclusion but with different justifications. Scholars assert that “climate induced migration” put courts into a crossroads. Courts can either broadly interpret refugee and human rights laws to protect the well-being of individuals or prioritise the concrete interests of sovereign states that hold greater political power. This binary situation either undermines human rights or undermines the existing international law system, which is based on the principle of sovereignty.<sup>46</sup>

<sup>40</sup> UNCHR (n 35) 6.

<sup>41</sup> UNCHR, “*Climate Change and Disaster Displacement*” <<https://www.unhcr.org/uk/climate-change-and-disasters.html>> Date of access 18 October 2021.

<sup>42</sup> For a detailed analysis of populism See, Ahmet Mert Duygun, “*Popülist Anayasacılığa Giriş (Introduction to Populist Constitutionalism)*” (2020) 9(18) *Journal of Constitutional Law* 397.

<sup>43</sup> ScienceDaily, “*Xenophobia strongly linked to Brexit, regardless of voter age, gender or education*” (2017) <<https://www.sciencedaily.com/releases/2017/11/171127090919.htm>> Date of access 18 October 2021.

<sup>44</sup> Detlef Jahn, “*Quick and dirty: how populist parties in government affect greenhouse gas emissions in EU member states*” (2021) 28(7) *Journal of European Public Policy* 980, 991-992.

<sup>45</sup> Duygun (n 42) 410-413.

<sup>46</sup> Burak Güneş and Bengü Çelenk, “*The Impasse of International Law on Climate-Induced Migration: Recent Developments and the United Nation’s January 2020 Decision on Climate Refugees*” (2021) 23(3) *Insight Turkey* 209, 217-218.

However, as an essential fact, studies reveal that countries that contribute the most to global carbon emissions (can be categorised as developed countries), which are considered the causes of the climate crisis, will be the ones that are least affected by the climate crisis. In contrast, countries most affected by the crisis are countries that contribute little carbon emissions.<sup>47</sup> In other words, the climate crisis has created a dilemma. Therefore, solving the problem of the refugee crisis—particularly the climate refugee crisis—is vital not only for those who are forced to leave their homes but also for the residents of their host countries.

Considering the climate change-immigration-populism triangle as expressed above, one might assume that this triangle manifests the entire picture. Even though this triangle is realistic, it is far from reflecting the whole story since most of the refugees and forcibly displaced people are hosted by the developing world. According to the UNHCR, 86 percent of the refugees and forcibly displaced Venezuelans are received by developing countries. Even more shockingly, the least developed countries host 27% of them.<sup>48</sup> Thus, it is fair to claim that although the so-called “first world countries” have experienced troubles such as right-wing populism and racism due to reaction towards refugees, considering their immense amount of resources and organisational capacities, they are still far away from hosting their fair share of refugees and displaced persons. Countries like Lebanon, Turkey, and Colombia are facing an immense burden that is more than they can handle. This burden might contribute to the destabilisation of these countries who lack the necessary resources that high-income countries abundantly have, which in turn might create even more refugees or immigrants from host countries for various reasons.

### C. Climate Refugees

It is highly likely that climate change will have a wide range of adverse effects. Undoubtedly, the adverse impacts of climate change will not only be limited to the ecological field; It will also have social, economic, political, and legal dimensions<sup>49</sup>, and those impacts will affect millions of people’s living conditions. However, because of the complex nature of climate change, determining its impacts is difficult, especially in the field of immigration. For instance, climate change could cause a decrease in natural resources, such as drought, and such a decrease could cause conflicts on water resources, resulting in migration. Although *per se* the reason for immigration seems to be conflict, the initial reason would be climate change. In other words, immigration could stem from various or combined causes, such as

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<sup>47</sup> See, Climate Watch, “*Historical GHG Emissions*” <[https://www.climatewatchdata.org/ghg-emissions?end\\_year=2018&start\\_year=1990](https://www.climatewatchdata.org/ghg-emissions?end_year=2018&start_year=1990)> Date of access 06 November 2021.

<sup>48</sup> UNHCR, “*Refugee Data Finder*” <<https://www.unhcr.org/refugee-statistics/>> Date of access 20 October 2021.

<sup>49</sup> Dimitra Manou and Anja Mihr, “*Climate Change, Migration and Human Rights*” in Dimitri Manau, Andrew Baldwin, Dug Cubie, Anja Mihr, Teresa Thorp (eds) *Climate Change Migration and Human Rights* (Routledge 2017) 3-4.

climate change, environmental disasters, conflicts, and economic crises.<sup>50</sup> For that reason, António Guterres, who was the UN High Commissioner for Refugees at that time, expressed that it was becoming increasingly challenging to categorise the displacement reasons into economic pressure, environment, or conflicts.<sup>51</sup> According to the UNDP, even rapid-onset natural disasters such as floods and storms cause millions of displacements throughout the world.<sup>52</sup> In this regard, considering that climate change does not only trigger rapid-onset environmental disasters, but also environmental degradation and slow-onset disasters, it enhances the risk of conflicts over dwindling environmental resources, which is why it is fair to assume that there will be a huge number of displaced people due to climate crisis.

On the other hand, migration due to environmental disasters is nothing new, and humanity has continued to move because of such events throughout history. Moreover, it is not possible to distinguish environmental disasters as “usual” and “triggered by climate crisis”. Therefore, it is not easy to determine whether the climate crisis caused migration movements or identify those who migrated because of it. However, Huber and Gullede emphasise that due to the climate crisis, we will probably experience severe environmental events that are statistically unlikely to occur in our lifetimes if there were no climate change.<sup>53</sup> Although it is not possible to attribute every short-term extreme weather event to the climate crisis, the risk of extreme environmental events has increased so much that we should assume that climate change somehow caused immigration by declining millions of people’s living conditions.<sup>54</sup> Studies have revealed that with global warming, not only the frequency of extreme environmental events but also the number of refugees has increased.<sup>55</sup>

Many scholars have attempted to predict how many people will be displaced due to the climate crisis.<sup>56</sup> Nevertheless, because of the complex nature of the climate crisis and the decision-making process for immigration, it is difficult to make such a determination. Therefore, we do not refer to the predicted numbers. However,

<sup>50</sup> Turgut (n 39) 301.

<sup>51</sup> See remarks by the UN High Commissioner for Refugees, The Guardian, “*Conflicts Fuelled by Climate Change Causing New Refugee Crisis, Warns UN*” (17 January 2008) <https://www.theguardian.com/environment/2008/jun/17/climatechange.food>> Date of access 22 October 2021.

<sup>52</sup> UNDP, “*Human Development Report 2020*”, 61 <<http://hdr.undp.org/sites/default/files/hdr2020.pdf>> Date of access 19 October 2021.

<sup>53</sup> Dan Huber and Jay Gullede, “*Extreme Weather and Climate Change, Understanding the Link, Managing the Risk*” (2011) Center for Climate and Energy Solutions, 8 <<https://www.c2es.org/wp-content/uploads/2011/12/white-paper-extreme-weather-climate-change-understanding-link-managing-risk.pdf>> Date of access 08 November 2021.

<sup>54</sup> Ibid 8.

<sup>55</sup> A comprehensive study on the number of environmental disasters through the decades; World Meteorological Organization (WMO), “*WMO Atlas of Mortality and Economic Losses from Weather, Climate and Water Extremes (1970-2019)*”, 19 <[https://library.wmo.int/doc\\_num.php?explnum\\_id=10769](https://library.wmo.int/doc_num.php?explnum_id=10769)> Date of access 21 October 2021; See, the growing number of international migrants between 1970-2019, IOM, “*World Migration Report 2020*”, 21 <[https://publications.iom.int/system/files/pdf/wmr\\_2020.pdf](https://publications.iom.int/system/files/pdf/wmr_2020.pdf)> Date of access 21 October 2021.

<sup>56</sup> These predictions vary from 25 million to 1 billion climate refugees. See, IOM, “*A Complex Nexus*” <<https://www.iom.int/complex-nexus>> Date of access 21 October 2021.

the study by Munia et al.. reveals the seriousness of the problem. According to this study, if humanity chooses the “middle road”<sup>57</sup> there will be 612 million people under freshwater stress and 512 million people will be approaching freshwater stress by 2050.<sup>58</sup> These numbers are not the numbers of displaced people but give a good idea of how many people could be relocated.

As a result, we can assume that there will be millions of displaced people due to the climate crisis. Those people may move because of slow-onset disasters (for instance, several small islands becoming inhabitable due to rising sea levels) or rapid-onset disasters (for instance, floods), economic crises, or armed conflicts triggered by environmental degradation over time. Additionally, there is no consensus on the definition of “climate refugees” or “environmental migrants”. Thus, considering both the complex nature of the climate crisis and the difficulty in establishing a connection between a particular immigration sample and the climate crisis, it is not possible to know exactly how many people have moved due to the climate crisis. Climate crisis-related movements are mostly invisible because of their complex nature.<sup>59</sup>

This complexity brings us to the question of how to define and classify climate crisis-related displacement. First, it should be underlined that there is neither an internationally binding framework for the classification of those displaced by the climate crisis nor a consensus in the literature on this issue. UNHCR strictly distinguishes the notion of “refugee” from “immigrant” due to legal considerations and uses the notion of “persons displaced in the context of disasters and climate change” instead of “climate refugee”.<sup>60</sup> The wording of the New York Declaration for Refugees and Migrants reflects this strict positive law understanding.<sup>61</sup> Like UNHCR, IOM also refers to the climate crisis movement as “environmental migration”.<sup>62</sup> As we discuss below, this approach appears to be correct in a legal sense. However, as Turgut underlines that, the term which will be used should reflect a holistic approach while maintaining the originality of the problem.<sup>63</sup> In this regard, based on the fact that the climate crisis causes environmental degradation; she uses the notion of “environmental migration”, which she claims will reflect a comprehensive approach to the problem.

<sup>57</sup> Which is the middle ground scenario between the three possible scenarios given in the study.

<sup>58</sup> Munia et al., “*Future Transboundary Water Stress and Its Drivers Under Climate Change: A Global Study*”, (2020) 8 *Earth’s Future* 1, 10.

<sup>59</sup> McAdam (n 34) 36-37

<sup>60</sup> UNHCR (n 41).

<sup>61</sup> UN General Assembly, New York Declaration for Refugees and Migrants, <[https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/71/1](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1)> Date of access October 22, 2021.

<sup>62</sup> IOM, “*Discussion Note: Migration and The Environment*” (2007) 1 <[https://governingbodies.iom.int/system/files/jahia/webdav/shared/shared/main/site/about\\_iom/en/council/94/MC\\_INF\\_288.pdf](https://governingbodies.iom.int/system/files/jahia/webdav/shared/shared/main/site/about_iom/en/council/94/MC_INF_288.pdf)> Date of access 22 October 2021.

<sup>63</sup> Turgut (n 39) 308.



Like Turgut, we believe that the term to be used must reflect a comprehensive approach and reveal the substructure (by her words, “*the macro dimension of the problem*”), namely, the climate crisis. However, since the climate crisis is the initial reason for environmental derogation, we believe displacement is the superstructural dimension of the problem, and the climate crisis is the substructural dimension of the problem. Thus, contrary to Turgut, we assert that the notion of “climate” should be used to define people displaced because of climate crisis.

The second issue is, what term should be used when making such a definition? Immigrant, refugee, or displaced person? Although the term “immigrant” is more inclusive than the concept of “refugee”, the most fundamental difference between immigrants and refugees is whether the individual moves voluntarily or involuntarily. The notion of a refugee only refers to involuntary or compelled movement, while the notion of an immigrant also refers to voluntary movement.<sup>64</sup> There is no consensus in the literature on whether all those who have moved because of the climate crisis are being compelled. For instance, according to Renaud et al., there are three categories of displacement due to the climate crisis and “environmentally motivated migrants” are those who flee because of a “steadily deteriorating environment” before the circumstances compel them to move.<sup>65</sup> In other words, writers argue that not all climate crisis-related movements are last-resort movements.

On the contrary, we argue that the climate crisis is a compelling fact, even though the rate of coercion may differ. Therefore, we assert that the notion that reveals the element of coercion should be used while defining climate crisis-related movements. In this context, we consider it appropriate to use the term “refugee”, considering that it should strikingly express compelling sociological circumstances, and we define climate change-related movement as “climate refugees”.<sup>66</sup> The main reason we use the term “refugee” instead of “displacement” is that the concept of refugee is more striking. On the other hand, the “climate refugee” we use in our study do not refer to refugee status in a legal sense but are used to explain the sociological situation.

## II. The Place of Climate Refugees in International Law

### A. Refugee Convention and the “Climate Refugees”

As briefly discussed above, the Refugee Convention has a narrow scope because of its contingent nature. Nonetheless, it is a powerful international mechanism that considers not only civil rights but also socio-economic rights and benefits that entail

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<sup>64</sup> Büşra Uyar, “*İnsan Haklarına Ekolojik Yaklaşım Çerçevesinde İklim Mülteciliği*” (Turhan Kitabevi 2021), 92.

<sup>65</sup> Fabrice Renaud, Olivia Dun, Koko Warner and Janos Bogardi, “*A Decision Framework for Environmentally Induced Migration*” (2011) 49 *International Migration* 5, 14-15.

<sup>66</sup> For a similar opinion See, Uyar (n 64) 95.



refugee status. The scope of the Refugee Convention and the rights entailed for refugee status constitute the minimum standards. That is to say, state parties to the Refugee Convention can neither limit the scope of the Refugee Convention nor the rights entitled to refugee status. However, it is possible for states to become parties to the 1967 Protocol with geographic and temporal reservations. Indeed, refugee status is not a status granted by states; it is a status that they recognise.<sup>67</sup> Moreover, individuals who fall within the definition of the Refugee Convention have the right to seek international protection regardless of whether the individual is in a State which is not a state party to the Refugee Convention (or the 1967 Protocol). In such circumstances, individuals will be under UNHCR's mandate, and whether the current host country does not grant refugee status will be irrelevant for protection.

State Parties may extend the scope of refugee status in their domestic laws<sup>68</sup> (this may be framed as complementary protection or otherwise) but are not obliged to provide equivalent rights to those not covered by the Refugee Convention. The refugee label is a legal status that entails a set of rights detailed between Articles 3-34 of the Refugee Convention. One of these rights—perhaps the most significant—is the *non-refoulement* principle. This is perhaps the most important principle of international refugee law because it prohibits States from returning refugees (or asylum seekers<sup>69</sup>) back to their countries, which pose a risk to individuals' lives or their freedom.<sup>70</sup> Even though this principle applies to both refugees and asylum seekers, refugee status entails certain socio-economic rights, and surely the refugee status is the main way to protect those who flee from their country. In this regard, it is crucial to examine whether climate refugees are within the scope of refuge under the Refugee Convention. If the answer is no, it shall be examined whether the climate refugees can seek protection under international human rights law.

With regard to the definition under Article 1/(A)-2 of the Refugee Convention, we can formulate the requirements for being a refugee under International Law as such: a refugee is a person who is; 1) outside of their home state (the element of alienage), because of the 2) well-founded fear 3) of being persecuted 4) for reasons of race, religion, nationality, membership of a particular social group or political opinion, and 5) the home country of this person is unable or unwilling to protect this person from such persecution.

<sup>67</sup> James Hathaway and Michelle Foster, *The Law of Refugee Status* (Second Edition Cambridge University Press Second Edition 2014), 1.

<sup>68</sup> See, The Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (hereinafter, OAU Convention) (adopted on 10 September 1969, entered into force 20 June 1974), adopted a broader refugee definition than the Refugee Convention. According to Article 1/2 of the OAU Convention, people displaced because of “events seriously disturbing the public order” are *inter alia* refugees.

<sup>69</sup> With this Notion we refer to those who need international protection but do not fall within the scope of the Refugee Convention.

<sup>70</sup> Doğa Elçin, “The principle of non-refoulement a comparative analysis between Turkish national law and international refugee law” in İbrahim Sirkeci, Doğa Elçin, Güven Şeker (eds.) “Politics and Law in Turkish Migration” (Transnational Press London, 2015) 39.

Moreover, the individual's concrete circumstances should not fall within the situations enumerated under Articles 1/C and 1/F of the Refugee Convention. From the perspective of our study, we will focus on whether "climate refugees" fulfil those criteria or not. Thus, we only examined relevant aspects for the examination of these criteria.

To begin with, both the majority opinion of scholars<sup>71</sup> and international organisations<sup>72</sup> emphasise that the "climate refugees" do not fall within the scope of the Refugee Convention. From our perspective, this interpretation seems to be partially correct. However, this does not mean that "climate refugees" are not worthy of being protected and will not be protected.<sup>73</sup> Although one might claim that climate refugees suffer as much as those who are persecuted due to political reasons, legal definitions serve an instrumental purpose and provide a set of criteria that certain rights and obligations which may be manifested through them. In other words, refugee status entails certain rights set out in the Refugee Convention and the drafters, who wrote the Refugee Convention after the second world war, intended to protect those who flee massacres and persecution (notably, from the war crimes such as holocaust). Thus, the contingent definition under the Refugee Convention does not distinguish who actually needs international protection and who does not; it is about who can be practically protected and whom the drafters are willing to protect. From our point of view, asserting that climate refugees cannot obtain refugee status in a legal sense under every circumstance would be flawed considering the complex nature and impacts of the climate crisis. Nevertheless, considering the wording of the current Convention, it is fair to assert that most climate refugees do not fall within the scope of the Refugee Convention due to several reasons.

First of all, the impacts of climate change are and are expected to be unequal, and the countries that are most affected are expected to be the poorest. Considering that immigration is linked with pre-existing circumstances such as socio-economic ability etc. most people who will move because of the climate crisis are expected to be internal.<sup>74</sup> However, the refugee definition under the Refugee Convention applies only to those who cross international borders; thus, most climate refugees will not meet this criteria.<sup>75</sup> This criterion can be deemed reasonable given that the system of public international law is based on the principle of equal sovereignty of states.

<sup>71</sup> Turgut (n 39) 313-317; İkbal Sibel Safı, "Ioane Teitiota Kiribati / Yeni Zelanda Davası ve BM İnsan Hakları Komitesi'nin İklim Mültecileri İle İlgili Tarihi Kararı (Ioane Teitiota Kiribati / New Zealand Case And Un Human Rights Committee's Historical Decision On Climate Refugees)" (2020) 22(2) Dokuz Eylül University Law School Review 509, 519-521; Edwards (n 30) 65-67; McAdam (n 34) 42-48, Güneş and Çelenk (n 46) 210.

<sup>72</sup> UNHCR, "Legal Considerations Regarding Claims for International Protection Made in Context of the Adverse Effects of Climate Change and Disasters" <<https://www.refworld.org/docid/5f75f2734.html>> Date of access 14 October 2021.

<sup>73</sup> McAdam (n 34) 42.

<sup>74</sup> Edwards (n 30) 60.

<sup>75</sup> Hathaway and Foster (n 67) 19.

Although the understanding of state sovereignty has weakened, rights under the Refugee Convention are provided for only those outside their country.<sup>76</sup> In conclusion, it is clear that the vast majority of “climate refugees” will fall outside the scope of the Refugee Convention, as most of the people displaced due to climate crisis-related natural disasters will move within their home country.<sup>77</sup> Although it is estimated that the climate crisis will increase cross-border migration, those who can cross borders will only be the tip of the iceberg.

However, those who can move across borders will not automatically fall within the scope of the Refugee Convention. Those who seek refuge should flee from their country because of “*well-founded fear of being persecuted*”. The Refugee Convention does not define the meaning of “persecution,” and this concept can be interpreted broadly.<sup>78</sup> However, we argue that it is unlikely to characterise climate change as “persecution” and as Hathaway and Foster underlines that a flex interpretation should be balanced against the imperatives of the rule of law.<sup>79</sup> In other words, a consistent interpretation should be adopted. In that sense, the concept of “persecution” should refer to human rights violations (or the risk of human rights violations) that are particularly serious. According to McAdam, while evaluating the concept, both the degree and proportion of violations should be considered.<sup>80</sup> The nature of the right at risk and the severity of impairment or restriction of the right should be considered when determining the existence of persecution.

Even though extreme weather events and other climate change-related natural disasters (e.g., water shortages, rising sea levels) cause serious harm and threaten human rights<sup>81</sup>, in most cases, they do not meet the discriminatory element of “persecution”. Moreover, people who are at risk of persecution should be exposed to such treatment because of their link to one of the five categories enumerated under the Convention. The individuals should be at risk of persecution for their race, religion, nationality, membership of a particular social group, or political opinion. Natural disasters and climate change do not make such a distinction.

However, there is a strong argument that climate refugees constitute a particular social group. According to Cooper, “environmental refugees” can be classified as a particular social group because they are politically powerless to protect

<sup>76</sup> Ibid 22.

<sup>77</sup> Turgut (n 39) 312.

<sup>78</sup> Through a broad interpretation, some scholars have argued that climate change can be characterised as persecution. See, Jessica B. Cooper, “*Environmental Refugees: Meeting the Requirements of the Refugee Definition.*” (1998) 6(2) New York University Environmental Law Journal 480.

<sup>79</sup> Hathaway and Foster (n 67) 182.

<sup>80</sup> McAdam (n 34) 43.

<sup>81</sup> Some authors assert that climate change-related disasters do not meet the severity level threshold of “persecutions”. See, McAdam (n 34) 43.

their environment.<sup>82</sup> On the other hand, a particular group should be linked by an immutable characteristic other than the risk of persecution.<sup>83</sup> Otherwise, people who are victims of a random attack could satisfy this criterion, which would be an inconsistent interpretation of the Refugee Convention. A particular social group should be affected somehow differently by climate change than the rest of society at large. As we discussed above, poorer people will be more affected by the climate crisis, and this fact is consistent with Cooper's ideas because, in most cases, poor people have little political power. Thus, it can be assumed that climate refugees may constitute a particular group. However, a link should be established between the harm caused by the climate crisis and poor conditions on a case-by-case basis.

Furthermore, governments should be unable or unwilling to protect them from persecution.<sup>84</sup> In other words, persecution can be formulated as; serious harm for the five conventional grounds and failure of state protection. In that sense, a group of people who have been victims or are under serious risk of being victims of natural disasters should be left alone by their State just because of their race or one of the other Conventional grounds. In that sense, it is fair to assume that people who flee because of natural disasters or bad economic conditions will unlikely fall within the Convention's scope.

According to McAdam, there might be several situations where environmental refugees fall within the scope of the Refugee Convention, and she provided five examples.<sup>85</sup> It seems like there are two main scenarios. First, there must be a natural disaster that creates serious harm, and governments either consciously or unable to take proper measures to stop it or not help those who are the victims of the natural disaster. The second scenario requires the government to cause natural disasters such as inducing famine by destroying crops.

On the other hand, there could be different possible scenarios. For instance, people could flee their countries where armed conflicts are occurring to control water supplies. This is a likely scenario for many water-scarce African states. If those people could show that their government is either unwilling or unable to protect their lives and that the danger of serious harm is likely to happen<sup>86</sup>, which forms a reasonable fear, they could obtain refugee status. However, in all these scenarios, people flee not only because of the impact of the climate crisis. Under the Refugee Convention('s formulation), people either cannot acquire refugee status or cannot acquire it solely based on the climate crisis; therefore, climate refugees are not inherently accepted or considered as refugees in the legal context.

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<sup>82</sup> Cooper (n 78) 524-525.

<sup>83</sup> McAdam (n 34) 46.

<sup>84</sup> Hathaway and Foster (n 67) 288-289.

<sup>85</sup> McAdam (n 34) 47-48.

<sup>86</sup> While assessing the likelihood of future harm; the harm can be less than a 50% chance, but the fear should be reasonable. See, McAdam (n 34) 49-50.

## **B. The Case of Ioane Teitiota Kiribati v. New Zealand and The Relevance of International Human Rights Law**

### **1. International Human Rights Law and the “Complementary Protection”**

Human Rights Law is very relevant to the climate refugee problem. As explained above, the climate crisis will not only affect economic areas, such as infrastructure and public services and will also threaten people’s lives. Therefore, Human Rights Law is an essential tool for eliminating these grievances that people will face.

Human Rights Law sets minimum treatment standards that all states must apply to individuals within their jurisdiction. This is very important considering that most people who will move because of the climate crisis will be internally displaced and excluded from both regional and global international refugee systems. In other words, human rights law is crucial for eliminating the grievances of internally displaced people because of the climate crisis. However, since current international law norms focus on the protection of international displaced people, we will content ourselves with the determination that Human Rights Law can be a basis for redressing the grievances of IDPs.

Another dimension of International Human Rights Law concerns the protection of international refugees. Human Rights Law allows people at risk to seek protection in other countries and sets minimum treatment standards in host countries. Human Rights Law has expanded in a sense that allows even people who are not protected by the Refugee Convention to enjoy the principle of non-refoulement.<sup>87</sup> This type of protection is referred to as “complementary protection”, as it complements the objectives of the Refugee Convention. However, this determination is not a legal determination but is used in the same manner as concepts such as “subsidiary protection” or “humanitarian protection” are used in the literature.<sup>88</sup>

People seeking protection from other countries require socio-economic rights like those provided for refugees under the Refugee Convention. An important aspect of complementary protection is the obligations of host states under the Human Rights Law. However, within the scope of our study, we will focus on the most basic principle arising from complementary protection, that is, the principle of non-refoulement, which prevents host states from removing immigrants, and we will discuss whether climate refugees can enjoy such protection.

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<sup>87</sup> Edwards (n 30) 69.

<sup>88</sup> A similar approach was also adopted by UNHCR. See, Runa Mandal, “*Protection Mechanisms Outside of the 1951 Convention, Complementary Protection*” (2005) <<https://www.unhcr.org/protect/PROTECTION/435df0aa2.pdf>> Date of access 23 October 2021.

In theory, any sufficiently serious violation of human rights may give rise to a non-refoulement obligation.<sup>89</sup> The UN Human Rights Committee (HRC) stated in its general comment no 31;

*“Moreover, the article 2 obligation requiring that States Parties respect and ensure the Covenant (International Covenant on Civil and Political Rights) rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.”*<sup>90</sup>

However, in practise, only the right to life and not to be subjected to torture, cruel, inhuman, or degrading treatment mostly gave rise to the principle of non-refoulement obligation for host countries. This is mainly because of the nature of the rights in question. The right to life and not to be subjected to torture, inhuman or degrading treatment are absolute rights that cannot be restricted. On the other hand, other human rights (such as the right to respect private and family life or the right to own property) that are likely to be adversely affected by the climate crisis are not absolute rights (mostly qualified rights) and can be restricted. In other words, such rights may give rise to the principle of non-refoulement only in exceptional cases.<sup>91</sup> As the House of Lords explained those exceptional circumstances in its *Ullah* decision; the right in question would be under such a real risk of severe violation that impairs the very essence of the right if the individual is sent back.<sup>92</sup> That is, the threshold for rights other than the right to life or the right not to be subjected to torture, inhuman, or degrading treatment would be very high, and mere violation of the right would not meet the threshold.<sup>93</sup> Nevertheless, complementary protection based on such rights in the context of climate crisis context is possible. The Supreme Court of Cassation of Italy emphasised that when determining whether the conditions meet the required threshold, not only situations arising from armed conflict but also situations involving social, environmental, or climatic degradation, as well as contexts of unsustainable exploitation of natural resources, should be considered.<sup>94</sup> Thus, climatic degradation can trigger the obligation of non-refoulement although the threshold is high.

On the other hand, it is a question mark whether absolute rights (right to life and right not to be subjected to torture, inhuman or degrading treatment), which are the main basis of complementary protection, can be applied in the context of climate

<sup>89</sup> Edwards (n 30) 70.

<sup>90</sup> HRC, General Comment no 31 (80), para 12 <<https://www.refworld.org/docid/478b26ae2.html>> Date of access 25 October 2021.

<sup>91</sup> McAdam (n 34) 53; Edwards (n 30) 70.

<sup>92</sup> *Regina v. Special Adjudicator es parte Ullah*, (UKHL 26 2004), para(s) 24, 50.

<sup>93</sup> McAdam (n 34) 81-82.

<sup>94</sup> *I.L. v. Italian Ministry of the Interior and Attorney General*, [2021] Corte Suprema di Cassazione

refugees. First, as Elçin reveals, relevant rights are included in many human rights conventions at both global and regional scales, and it should be accepted that these rights are respected at the whole world scale.<sup>95</sup> Although these rights have many bases in positive law, many conventions lack the authority to hold states responsible for non-refoulement obligations related to these rights.<sup>96</sup> In this respect, the International Covenant on Civil and Political Rights (ICCPR) seems to be the most appropriate convention that can constitute a basis for climate refugees to enjoy complementary protection on a global scale; since the ICCPR has an enforcement mechanism that allows individual applications, namely the HRC.

In this respect, it should be considered whether climate refugees can enjoy complementary protection based on ICCPR Article 6 (right to life) and ICCPR Article 7 (prohibition of cruel, inhuman, or degrading treatment). It should be underlined that the climate crisis does not cause only rapid-onset events (such as floods) but also long-term catastrophes (or slow-onset disasters); therefore, the climate crisis would greatly harm socioeconomic rights. In this respect, it is important to determine whether socio-economic elements can be included in the scope of those rights that can give rise to non-refoulement obligation, and if so, to what extent they can be included.

Although Article 7 of the ICCPR entails a non-refoulement obligation, in theory,<sup>97</sup> non-refoulement jurisdiction based on the right in question was mostly developed by the European Court of Human Rights (ECtHR) rather than the HRC. As the ECtHR underlined in its *Soering* decision, both Article 2 (right to life) and Article 3 (prohibition of cruel, inhuman, or degrading treatment) of the European Convention on Human Rights (ECHR)<sup>98</sup> gave rise to the principle of non-refoulement<sup>99</sup>, and since that decision, Article 3 of the ECHR is frequently used for non-refoulement-based claims.<sup>100</sup> Moreover, as the ECtHR underlines in its *Airey* decision, civil and political rights, such as Article 3, have socio-economic dimensions<sup>101</sup>, and breaches of socio-economic rights may be characterised as Article 3 of the ECHR's violations. However, treatment that violates Article 3 of the ECHR should reach a "minimum level of severity" that depends on both the objective and subjective circumstances of the case.<sup>102</sup> In that sense, prohibition of cruel, inhuman, or degrading treatment provisions may provide a limited basis for complementary protection claims by climate refugees. Applicants must prove that if they return to their country of origin,

<sup>95</sup> Elçin (n 70) 40-46.

<sup>96</sup> In other words, most of the conventions are lack of executive organs; McAdam (n 34) 83.

<sup>97</sup> HRC, General Comment no 31 (80), (n 90), para 12.

<sup>98</sup> European Convention on Human Rights, (adopted on 4 November 1950, entered into force 3 September 1953).

<sup>99</sup> *Soering v. United Kingdom*, App no 14038/88 (ECtHR 07 July 1989), para(s) 101-104.

<sup>100</sup> David Harris, Michael O'Boyle and Colin Warbrick (eds), "Law of the European Convention on Human Rights" Mehves Bingöllü Kıldı, Ulaş Karan (trans.) (First edition in Turkish, Council of Europe, 2013) 82.

<sup>101</sup> *Airey v. Ireland*, App no 6289/73 (ECtHR 09 October 1979), para 26.

<sup>102</sup> Harris, O'Boyle and Warbrick (n 100) 72.



they will be faced with severe economic conditions that constitute a violation of Article 3 of the ECHR. In other words, Article 3 of the ECHR does not provide protection until the circumstances become intolerable. Thus, especially for climate refugees, the timing of their application is a key factor.<sup>103</sup> Furthermore, as the ECtHR is increasingly reluctant to grant rights to asylum seekers<sup>104</sup>, it is fair to assume that Article 3 of the ECHR is not promising for most internationally displaced climate refugees. Given such a narrow interpretation of the right by the ECtHR, we can predict that a similar interpretation will apply to the right under Article 7 of the ICCPR.

On the other hand, in terms of the global human rights mechanism, the developing jurisdiction for the principle of non-refoulement is based on the provisions of the right to life. The right to life under the ICCPR appears to be the most promising option for complementary protection claims by climate refugees. The right to life, which entails the obligation of non-refoulement, extends to having an adequate standard of living. In other words, it encompasses the right to have the minimum necessities of life to live with dignity.<sup>105</sup> In a climate crisis context, the harm will be on individuals' living conditions in most cases, and the severity and extent of such harm will determine whether there has been a violation of the right to life. However, the main question that we should consider is whether the right to life allows pre-emptive flight. In other words, can individuals seek complementary protection before the conditions violate their right to life? It is an important aspect considering climate change will have adverse impacts on millions of people's living conditions through slow-onset disasters.

In terms of complementary protection claims, the focus will be on the potential harm that individuals may face if they are removed. As the HRC underlined, there should be "*substantial grounds for believing that there is a real risk of irreparable harm*".<sup>106</sup> Thus, unlike the Refugee Convention, in which the risk of harm could be less than %50, the forward-looking assessment of harm has been interpreted in a narrow sense. That is, a hypothetical risk is insufficient and must be actual or imminent.<sup>107</sup> However, suppose the applicant could show that slow-onset environmental degradation will have long-term effects that violate their right to life. In this case, the applicant can enjoy complementary protection. However, the applicant must have sufficient evidence, which seems difficult to achieve.

Another issue that should be discussed is whether international human rights mechanisms can base their decisions solely on normative principles. In other words, it must be questioned whether courts (or states) will render protection to individuals

<sup>103</sup> McAdam (n 34) 84-87.

<sup>104</sup> See, *Ilias and Ahmad v. Hungary*, App no 47287/15 (ECtHR (GC) 21 November 2019); *N.D. and N.T. v. Spain*, App no 8675/15 and 8697/15 (ECtHR (GC) 13 February 2020).

<sup>105</sup> McAdam (n 34) 56.

<sup>106</sup> HRC, General Comment no 31 (80), (n 90), para 12.

<sup>107</sup> McAdam (n 34) 57.



seeking refuge due to the effects of climate change, even if the applicant provides sufficient evidence. While the law is supposed to be normative, it must also be grounded in a concrete social environment. In the context of international law, this environment is shaped by sovereign states' will.

Güneş and Çelenk argue that in cases with normative outcomes for international disputes, these two aspects of law—normative principles and the will of sovereign states—can cancel each other out, rendering legal objectivity impossible. The justification for a decision could be based either on the sovereign state's will or on the overarching principles of human rights. Consequently, the decision will be political rather than objective. Therefore, the decisions of international human rights tribunals must be constrained by the political needs of sovereign states.<sup>108</sup>

As a result, it is fair to assume that complementary protection does not allow preemptive flight in most cases. However, international human rights mechanisms are still promising for providing complementary protection to climate refugees, especially where the adverse effects of climate change have occurred. Moreover, human rights mechanisms are “living instruments” that can be interpreted according to the needs of human beings. In this way, we examine the first adaptation to the existing human rights criteria in the context of climate crisis and climate refugees.

## 2. Case Study: Ioane Teitiota v. New Zealand

A groundbreaking decision (also the first decision of the HRC on the topic) regarding climate refugees and the principle of non-refoulement was the “*Ioane Teitiota v New Zealand*” decision of the HRC.<sup>109</sup> The author of the communication is Ioane Teitiota, a man from Kiribati who sought refuge in New Zealand because of climate change-related issues.

According to the author's statement, he was forced to leave his native Tarawa Island for New Zealand as a combined result of water scarcity (due to the contamination by rising salty sea water), overcrowding, erosion, a housing crisis, land disputes, and related violence. Thus, he sought asylum in New Zealand. In order to evaluate the application; The Immigration and Protection Tribunal, which is responsible for assessing such applications, was considered an expert, and the 2007 National Adaptation Programme of Action filed by Kiribati under the UN Framework Convention on Climate Change (UNFCCC). Both the Expert and the Adoption Programme revealed the general and systematic deterioration of living conditions in Kiribati due to climate change.<sup>110</sup>

<sup>108</sup> Güneş and Çelenk (n 46) 217-226.

<sup>109</sup> “*Ioane Teitiota v. New Zealand*”, CCPR/C/127/D/2728/2016 (HRC 24 October 2019).

<sup>110</sup> *Ibid* 2

Although the Tribunal found the author credible, it nevertheless rejected the applicant for refugee status. The Tribunal expressed its decision as follows: “*the author did not objectively face a real risk of being persecuted if returned to Kiribati*”.<sup>111</sup> In addition to the rejection of the application, The Tribunal decided to deport I. Teitiota back to Kiribati. Ioane Teitiota sought to appeal the Tribunal’s decision. The Supreme Court rejected the appeal while avoiding the rejection of “*the possibility that environmental degradation resulting from climate change or other natural disasters could create a pathway into the Refugee Convention or other protected person jurisdiction*”.<sup>112</sup>

After unsuccessful attempts to find a solution at the national level, I. Teitiota sought remedies in the HRC and claimed that New Zealand had violated his right to life under the ICCPR. Although the Committee decided that New Zealand had not violated the author’s right to life under Article 6(1) of the ICCPR,<sup>113</sup> it nevertheless expressed some ground-breaking findings. The HRC accepted and underlined that climate change is a real threat to the right to life by expressing:

*“The Committee recalls that the right to life cannot be properly understood if it is interpreted in a restrictive manner, and that the protection of that right requires States parties to adopt positive measures. The Committee also recalls its general comment No. 36 (2018) on the right to life, in which it established that the right to life also includes the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death (para 3) The Committee further recalls that the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 of the Covenant even if such threats and situations do not result in the loss of life. Furthermore, the Committee recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”*<sup>114</sup>

Moreover, The committee has cleared the way for climate refugees to enjoy complimentary protection mechanisms, namely the “non-refoulement” principle by declaring that:

*“...The Committee is of the view that without robust national and international efforts, the effects of climate change in receiving States may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the non-refoulement obligations of sending States. Furthermore, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized.”*<sup>115</sup>

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<sup>111</sup> Ibid 4

<sup>112</sup> Ibid 5.

<sup>113</sup> Ibid 12.

<sup>114</sup> Ibid 9 .

<sup>115</sup> Ibid 11

Despite the fact that the Committee's decision has not provided Ioane Teitiota with the remedy he was expecting; it is celebrated by many as a milestone for the protection of climate refugees. As Safi expresses: "...*While different court decisions on different elements of the refugee definition lead to differing criteria for refugee recognition between states, the situation for asylum seekers is uncertain. For this reason, every new decision that can constitute case law in terms of refugee law is important. The decision that is the subject of this study is also a historical decision that can lead to state practices and therefore court decisions.*"<sup>116</sup>

Nevertheless, it is fair to emphasise that the decision also sets some limitations. First, although the HRC acknowledged that Kiribati was severely affected by the climate crisis, it decided that these conditions did not meet the threshold for violation of Article 6. In this respect, if the effects of the climate crisis in Kiribati do not meet this threshold, it is a question mark under what conditions can meet. Second, the HRC has given particular emphasis to Kiribati's efforts to combat the climate crisis. However, the emphasis here is only on Kiribati's plan to combat the climate crisis. However, they did not discuss whether this plan is an effective way to address the consequences of the climate crisis.<sup>117</sup>

In conclusion, despite its limitations (especially considering the evaluation on the non-refoulement principle), the decision paved the way for more effective protection of climate refugees.

### III. Mitigating the Problem

#### A. Insufficiency of the Existing Protection Mechanisms in International Law

In light of our examinations, it is fair to conclude that the existing international human rights system is insufficient to address the refugee crisis. We will try to identify such insufficiency in this direction before moving on to our proposals for solving the refugee crisis.

From our perspective, one of the main problems of the current system is the traditional understanding of human rights decision-making system, which offers individualised solutions to structural and global crises. In other words, while the climate crisis affects people's living conditions on a massive basis and can lead to mass migration, the traditional human rights system offers individualised solutions instead of a group-based approach. Many scholars argue that solutions to global

<sup>116</sup> Safi (n 71) 510.

<sup>117</sup> Adaena Sinclair-Blakemore, "Teitiota v New Zealand: A Step Forward in the Protection of Climate Refugees under International Human Rights Law?" (OxHRH Blog, 2020) <<https://ohrh.law.ox.ac.uk/teitiota-v-new-zealand-a-step-forward-in-the-protection-of-climate-refugees-under-international-human-rights-law>> Date of access 22 October 2021.

problems can be provided through collective-based rather than individual-based rights.<sup>118</sup> In the context of climate refugees, McAdam asserts that coming from an area affected by the climate crisis should justify the movement and be sufficient to enjoy (at least) complementary protection. However, the structure of the current system requires that subjective characteristics as well as objective movement characteristics be considered. In other words, to enjoy protection, individuals must show why the climate crisis affects them personally.<sup>119</sup> This individualised approach is insufficient despite global problems and constitutes a structural problem. To provide adequate solutions, the system should employ a group-based approach.

On the other hand, the current refugee law provides protection only to a limited number of individuals, especially climate refugees. As discussed above, the Refugee Convention offers a very limited scope for addressing climate refugees. First, while most climate refugees will move within their national borders, IDPs are outside the scope of refugee law. Although several attempts have been made to protect IDPs<sup>120</sup>, these efforts are insufficient in the face of a global crisis.

The second problem is that climate refugees largely do not fall within the scope of the Refugee Convention and therefore do not enjoy protection stemming from it. To solve this problem, many authors have argued either a new refugee convention encompassing climate refugees or an annex to the Refugee Convention that would also embrace climate refugees.<sup>121</sup> Moreover, there are efforts to expand the scope of refugee definition in international law.<sup>122</sup> Indeed, the two prominent regional legal documents regarding refugee rights, namely the OAU Convention and the Cartagena Declaration, define refugees as people who have been displaced due to “*events seriously disturbing the public order*”<sup>123</sup>, and one might claim that climate refugees are within the scope of these definitions. Although these definitions are more inclusive than the Refugee Convention in certain dimensions, they are far

<sup>118</sup> One of the famous proposals for the collective right approach is “planetary rights” proposed by Weiss. See, Edith Brown Weiss “Intergenerational Equity in International Law” (1987) 81 Proceedings of the ASIL Annual Meeting 126, 132-133.

<sup>119</sup> McAdam (n 34) 87-89.

<sup>120</sup> See, African Union Convention For the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), (adopted on 23 October 2009, entered into force 06 December 2012), Article 5/4 “*States Parties shall take measures to protect and assist persons who have been internally displaced due to natural, or human made disasters, including climate change.*”; In addition, the problem of IDPs has begun to be recognised on a global scale, See, New York Declaration for Refugees and Migrants, para 20 “*We recognize the very large number of people who are displaced within national borders and the possibility that such persons might seek protection and assistance in other countries as refugees or migrants. We note the need for reflection on effective strategies to ensure adequate protection and assistance for internally displaced persons and to prevent and reduce such displacement.*”.

<sup>121</sup> Safi (n 71) 537; Turgut (n 39) 325-326; In addition, a draft convention has been prepared regarding this issue, See, “Draft Convention on the International Status of Environmentally-Displaced Persons” (third version) <<https://cidce.org/wp-content/uploads/2016/08/Draft-Convention-on-the-International-Status-on-environmentally-displaced-persons-third-version.pdf>> Date of access 27 September 2021.

<sup>122</sup> See, Article 1/2 of the OAU Convention; See, Article III/3 of the Cartagena Declaration on Refugees (Cartagena Declaration), Adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico, and Panama (adopted on 22 November 1984).

<sup>123</sup> This is the wording of the OAU Convention. According to the Cartagena Declaration, “*persons who have fled their country because... other circumstances which have seriously disturbed public order.*” are included as refugees.

from encompassing all climate refugees. In fact, to fall within those definitions; the event that seriously disturbs public order must *exist as a matter of fact*.<sup>124</sup> In other words, contrary to the Refugee Convention, which assesses the risk of future harm, pre-emptive flight is not covered by those definitions.<sup>125</sup> Therefore, while those who flee because of rapid-onset disasters may enjoy refugee status; those who flee from slow-onset disasters are excluded until a certain level of severity threshold is met. As a result, they are expected to suffer constantly until this severity threshold is met. Thus, it is fair to conclude that even those definitions are insufficient to remedy the climate refugee crisis; hence, a comprehensive definition that provides protection for all climate refugees is needed.

As we have discussed above, human rights mechanism contains the potential to remedy the climate refugee crisis. However, because of the lack of a risk assessment nature, they could only be a remedy for situations after damage has been done.<sup>126</sup> Moreover, even in cases where harm has occurred, the international law system based on state sovereignty will place courts and/or states at a crossroads between the ideal of protecting human rights and the realpolitik of the decisions to be made. In other words, decisions will not be objective but subjective and political. This, in turn, leaves very limited room for decisions in favour of those seeking refuge because of the climate crisis.<sup>127</sup> Hence, the existing human rights system is also insufficient for solving the crisis.

However, we must admit that all these problems are secondary. Our analyses reveal that the fundamental problems are the reluctance of states to take adequate action and alter their contemporary production system (which doesn't prioritise the environment and commercialise nature) to solve the global crisis.<sup>128</sup> In other words, while the existing Refugee Law and Human Rights Law mechanisms are insufficient to resolve the current crisis, states are avoiding a comprehensive approach to the crisis because of the financial burdens it will create. Moreover, empirical studies on the implementation of human rights mechanisms show that even existing mechanisms have serious enforcement problems.<sup>129</sup>

Although a comprehensive definition of the refugee is necessary, if this definition is accepted and implemented, the definition to be created will have a practical

<sup>124</sup> UNHCR, "Legal Considerations Regarding Claims for International Protection Made in context of the Adverse Effects of Climate Change and Disasters" (2021) 33(1) International Journal of Refugee Law 151, 162.

<sup>125</sup> McAdam (n 34) 49.

<sup>126</sup> Ekşi (n 37) 41.

<sup>127</sup> Güneş and Çelenk (n 46) 217, 226.

<sup>128</sup> According to Turgut, to solve the climate refugee crisis, capitalist production methods must be questioned. However, states are reluctant to recognise this fact, Turgut (n 39) 339.

<sup>129</sup> As an example, See the map revealing how much of the ECtHR decisions are implemented by the states parties, European Implementation Network, "Country Map" <<https://www.einnetwork.org/countries-overview>> Date of access 28 October 2021.

counterpart. However, in the face of this reluctance of the states, it seems difficult to implement a comprehensive definition that will eliminate the grievances; since the states are reluctant to implement even the relatively less demanding measures of the current legal documents. Moreover, what needs to be done to solve the refugee crisis is the elimination of the problem that caused the crisis itself, in addition to a broad definition of refugees.<sup>130</sup> That is, fighting the climate crisis.

## **B. Draining the Swamp: Fighting the Climate Crisis**

### **1. On the Necessity of Draining the Swamp**

As discussed in the previous topic, the international legal texts (mainly the Refugee Convention), which are aimed at refugee rights, depend on the principle that refugees will be extant; since the very existence of refugee rights could be ineloquent if there were no refugees to claim and exercise those rights. Thus, it is fair to assert that, instead of ceasing the reasons which force people to seek refuge in the first place, current legislation mainly focuses on protecting refugees after being forced to seek refuge.

Although it is necessary to provide refugees with rights and international protection, this can only partially ameliorate their situation. Because even refugees who have arrived in so-called “first world countries,” such as the United States, are psychologically more vulnerable than other immigrant groups.<sup>131</sup> Therefore, being a refugee, even in developed countries, is a challenging way of existing. Moreover, considering those who are even less fortunate since they are not able to leave their home country might face even worse consequences in their home country<sup>132</sup>; it is clearly more efficient to fight against the substructure that creates the superstructural result of refugees, both for refugees and those who cannot even become refugees.<sup>133</sup>

In the context of climate refugees, the substructure that creates the superstructure made up of climate refugees is the climate crisis. Thus, if we can overcome the climate crisis, it will be possible to prevent climate refugees from suffering before they even exist. Moreover, unlike legal solutions (like the Refugee Convention) that are aimed at protecting refugees when they seek refuge; overcoming the climate crisis means that both refugees and those who do not have the chance to seek refuge might be protected.

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<sup>130</sup> This does not mean that efforts to ensure refugee status for climate refugees are not important. On the contrary, these efforts are crucial. However, suggesting a broader definition of refugees is not the key to solving the refugee crisis. See, Turgut (n 39) 337-338.

<sup>131</sup> American Psychological Association, “*Crossroads the Psychology of Immigration in the New Century/ Report of the APA Presidential Task Force on Immigration - Executive Summary*” (2012), 8 <<https://www.apa.org/topics/immigration-refugees/executive-summary.pdf>> Date of access November 9, 2021.

<sup>132</sup> See, Part I. B. “*The phenomenon of Refugee Crisis*”.

<sup>133</sup> The term “substructure” here refers to the causes and circumstances that force people to seek refuge. Thus, the term “superstructure” refers to those who seek refuge for underlying substructural reasons.

Another benefit of targeting the substructure, namely, the climate crisis, is that it would make the lives of the remaining refugees by simply reducing the total number of refugees since, as explained before<sup>134</sup>, there is a correlation between the rising number of refugees and anti-refugee populist movements. In other words, a possible success in the climate crisis does not only mean preventing millions of people from becoming refugees or ameliorating the lives of those who cannot even afford to become refugees; but also means better protection and conditions for those who seek refuge due to reasons other than the climate crisis. Therefore, it enables refugees to have and exercise rights with better enforcement.

Nevertheless, it shall be emphasised that, even within the most optimistic estimates, we will face the results of climate change to some degree<sup>135</sup>; thus, it is quite possible that there will be climate refugees who will need legal protection, regardless of the success of efforts to combat climate change. In conclusion, neither legal remedies aimed at protecting extant refugees nor combating climate change are adequate by themselves; in order to maximise the protection, both the first and second kinds of solutions are necessary. Moreover, it is only a matter of common sense that climate refugees, who sit at the crossroads of the climate crisis and the refugee crisis, can be adequately protected by a combination of climate action and refugee rights.

## 2. Tools to Combat Climate Change

In order to fight the climate crisis, the tools needed to conduct this struggle must be carefully chosen. These tools can be categorised dually; namely, the legal tools and the technological tools.

### a. Legal Tools

The research named “Peoples’ Climate Vote”, demanded by the UN Development Programme (UNDP) and conducted by the University of Oxford, displays support for climate action among the majority of individuals who represent over half the world’s population.<sup>136</sup> Thus, it can be righteously asked why humanity is failing<sup>137</sup> in its fight against climate change when most people favour climate action. This very question reflects the fact that it is not the people but the states that can effectively prevent climate catastrophe. Then it shall be asked again: in the overwhelming majority of the world, politicians are elected by the people; so why does such a contradiction exist in the first place? There are two underlying problems that might have contributed to this

<sup>134</sup> See, Part I. B. “*The phenomenon of Refugee Crisis*”.

<sup>135</sup> See, Part I. A. 2. “2. *Current and Possible Outcomes of the Climate Crisis*”.

<sup>136</sup> UNDP, “*World’s Largest Survey of Public Opinion on Climate Change: A Majority of People Call For Wide Ranging Action*” (n 30).

<sup>137</sup> The Economist, “*The world is losing the war against climate change*” (27.08.2018) <<https://www.economist.com/leaders/2018/08/02/the-world-is-losing-the-war-against-climate-change>> Date of access October 11, n 2021.



contradiction. The first problem occurs on a global scale; the second problem occurs on a local scale.

The first problem lies in how global legal and political systems are designed. The modern international system reveals itself nominally. Namely, global politics are imagined and constructed not as a field of interaction between mortal human beings but as a playground between fictional nations<sup>138</sup> or “inter-nations”. Thus, global politics and initiatives are not only based on but also limited by states’ sovereignty. The concept of national sovereignty is so strictly dwindled with our modern epistemology that for many, it is impossible to imagine a world without it.<sup>139</sup> In the UN Charter, the concept of national sovereignty is emphasised and enshrined as follows: “*Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state...*”.<sup>140</sup>

Sovereign states are the essence of international law because their will and consent are the keystones of our legal and political landscape. This issue is expressed in the preamble of the Vienna Convention on the Law of Treaties (1969) as follows: “*Noting that the principles of free consent and of good faith and the pacta sunt servanda rule are universally recognized...*”.<sup>141</sup>

On the contrary, the climate crisis is above nations since the earth’s climate realities do not recognise fictive nations or borders. Therefore, humanity must solve a global problem by using only local tools. As a result of this paradigm, international organisations and agreements, which depend on sovereign states’ will and consent, are the closest things to global-scale cooperation. Thus, international legal structures, namely international organisations and agreements, are the ultimate tools to fight climate crisis.

The two most prominent international legal structures regarding climate action are the two UN agreements (both of which are related to the UNFCCC) that are aimed at fighting against climate change: the Paris Agreement (2015) and the Kyoto Protocol (1997). Both are dependent on the parties’ (the states’) consent, commitment and goodwill to achieve their goals since there are no superior mechanisms (such as a higher supranational assembly or a bureaucratic mechanism) that can surpass national sovereignties and directly implement the agreements. As a result, the states must comply with the provisions laid down in the agreements.

<sup>138</sup> Benedict Anderson, “*Hayali Cemaatler: Milliyetçiliğin Kökenleri ve Yayılması*”, İskender Savaşır (trans.) (Metis Yayınları 2020) 23-26.

<sup>139</sup> Christian Volk, “*The Problem of Sovereignty in Globalized Times*” (2019) (Law, Culture, and the Humanities) Sage Publication).

<sup>140</sup> See Article 2/7 of the United Nations Charter (adopted 26 June 1945, entered into force 24 October 1945).

<sup>141</sup> See preamble of the Vienna Convention on the Law of Treaties (signed on 23 May 1969, entered into force on 27 January 1980).



Furthermore, the States are not obliged to become parties to the agreements (or any other legal document). Thus, no state can be forced to become a party to the agreements or to adopt climate action. Also, it should be emphasised that parties can freely withdraw from the agreements, as there are no legal obstacles or sanctions to prevent them from doing so. Moreover, while the United States officially withdrew from the Paris Agreement on November 4, 2020; Canada withdrew from the Kyoto Protocol in 2011. Neither of the two countries faced sanctions regarding their withdrawal because no sanctions envisaged in either of the agreements regarding the withdrawal of parties.

Another issue regarding the agreements is the lack of enforcement. The mechanisms of compliance and enforcement envisaged in the Kyoto Protocol are relatively weak compared to domestic courts.<sup>142</sup> Meanwhile, the Paris Agreement provides no legal sanction for failure to comply with the agreement. Nevertheless, it is possible that these two agreements would become a part of the signatory states' domestic law and could be litigated as a matter of domestic law. Indeed, in the “State of the Netherlands v. Urgenda Foundation” (2019) decision, Supreme Court of the Netherlands ruled that the Netherlands failed to take adequate action to fight climate change and clearly emphasised the Netherlands' legal commitment to international law.<sup>143</sup>

Concerning the Paris Agreement, it should be emphasised that the commitments designated by the parties are too modest to achieve the agreement's goals.<sup>144</sup> Moreover, many states are reluctant to raise their commitments<sup>145</sup>, and in the context of the Paris Agreement, it is legally impossible for them to do so.

The second problem is that even if the people of a country demand climate action, the government may not always comply with the will of the people because of various motivations. The contradiction between the will of people and the public policies stems from different reasons in different countries. In many countries, policymaking might be dominated by interest groups. For example, political scientists Martin Gilens and Benjamin I. Page stated in their influential study “*Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*” that “*When the preferences of economic elites and the stands of organized interest groups are controlled for, the preferences of the average American appear to have only a minuscule, near-*

<sup>142</sup> Michael Grubb, “*The Economics of the Kyoto Protocol*” (2003) 4(3) World Economics 143, 157.

<sup>143</sup> *State of the Netherlands v. Urgenda Foundation*, Case Number: 19/00135 ECLI:NL:HR:2019:2007 (The Supreme Court of the Netherlands 2019).

<sup>144</sup> UNFCCC, “*Climate Commitments Not On Track to Meet Paris Agreement Goals*” as *NDC Synthesis Report is Published*, (26.02.2021) <<https://unfccc.int/news/climate-commitments-not-on-track-to-meet-paris-agreement-goals-as-ndc-synthesis-report-is-published>> Date of access November 12, 2021.

<sup>145</sup> Climate Action Tracker, “*CAT Climate Target Update Tracker*” <<https://climateactiontracker.org/climate-target-update-tracker/list-non-updating-countries/>> Date of access November 12, 2021.

zero, statistically non-significant impact upon public policy.”<sup>146</sup> and added “When a majority of citizens disagrees with economic elites or with organized interests, they generally lose. Moreover, because of the strong status quo bias built into the U.S. political system, even when fairly large majorities of Americans favor policy change, they generally do not get it”.<sup>147</sup>

Although the example above might be considered an isolated and individual anomaly, the contradiction between people’s values and governments’ legal policies is starkly common. In her research named “Unpopular Constitutionalism”, Mila Versteeg claims that “Constitutions are commonly thought to express nations’ highest values. They are often proclaimed in the name of “We the People” and are regarded—by scholars and the general public alike—as an expression of the people’s views and values. This Article shows empirically that this widely held image of constitutions does not correspond with the reality of constitution making around the world. The Article contrasts the constitutional-rights choices of ninety countries between 1981 and 2010 with data from nearly one-half million survey responses on cultural, religious, and social values conducted over the same period. It finds, surprisingly, that in this period, the link between nations’ specific constitutional choices and their citizens’ values has generally been weak or non-existent.”<sup>148</sup>

In addition to the claims above; as mentioned in the famous Brundtland Report (1987)<sup>149</sup>, it is not only ordinary voters who have little effect on the system but also future generations, who cannot even vote today, who face the fatal consequences of climate crises, although they make comparatively little to no contribution to the system that dooms them. Again, as expressed in the report; people from lower economic classes, citizens of the developing world, and future and younger generations will face the worst consequences of the climate crisis, even though they have no actual power to stop it.

In conclusion, undermining or ignoring democratic demands is not an endemic situation in policymaking. Thus, it is not surprising that the ever-growing public demand for climate action is being ignored by governments. For countries populated by people who prioritise climate action, democracy would be a transformative tool.

<sup>146</sup> Martin Gilens, Benjamin I. Page, “Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens” (2014) 12(3) Perspectives on Politics, American Political Science Association, 564, 575.

<sup>147</sup> Ibid 576.

<sup>148</sup> Mila Versteeg, “Unpopular Constitutionalism” (2014) 89 (3) Indiana Law Journal 1133; It shall be emphasized here that it is necessary to express our gratitude to Şafak Evran Topuzkanamış, who has translated the article “Unpopular Constitutionalism” to Turkish, since she enabled the writers of this article to become aware of the article “Unpopular Constitutionalism” in the first place. See: Mila Versteeg, translation to Turkish: Şafak Evran Topuzkanamış, “Popüler Olmayan Anayasacılık” (2018) 20 Dokuz Eylül University Law School Review 125.

<sup>149</sup> See, UN Secretary-General, World Commission on Environment and Development, “Our Common Future”, <<https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>> Date of access November 7, 2021.

Nevertheless, the relationship between climate action and democracy isn't necessarily a harmonious one. Some populist regimes and politicians may adopt counterproductive climate policies through democratic means. As mentioned above, according to research that focuses on countries in the European Union (EU); right-wing populist governments in North-Western and Eastern Europe are related to more GHG emissions, while left-wing populist governments in Southern Europe are related to less GHG emissions.<sup>150</sup> A remarkable example of democratic reactions with anti-climate action tendencies is the "Gilets Jaunes" (Yellow Vests) movement in France, where the protestors were against the new carbon tax, which was aimed at reducing carbon emissions.<sup>151</sup>

In conclusion, the lack of a supranational climate organisation and the dominance of national sovereignty jeopardise the efforts to adopt global climate action. Initiatives such as the Paris Agreement and the Kyoto Protocol are doomed to always be in a fragile state that is constantly under the threat of collapse. More vehemently, this fear of collapse is not in vain, as seen in the U.S.A.'s decision to withdraw from the Paris Agreement and Canada's decision to withdraw from the Kyoto Protocol. Thus, national sovereignty is swinging as the sword of Damocles over the heads of many generations. Although countries cannot be legally forced to take more effective action to prevent climate catastrophe, growing public awareness does not seem effective either.

Then how can humanity transcend these issues and possible climate catastrophe? One may propose fortifying the agreements through more assertive climate goals or to draft new international agreements. Although these proposals might sound like good ideas, one should not forget the problems associated with the current international agreements because many of the problems associated with the two UN agreements are inherent to any international agreement. The main issue here is how the global legal system is organised. Whether it is the Paris Agreement or any other future agreement in the same context, the states cannot be forced to sign or conduct international agreements.

One possible solution to overcome this dilemma between international law and national sovereignty be the example of the Netherlands. In the example of the Netherlands, international law has become part of national law. This solution seems to be in accordance with the current international legal system since it depends on the logic that sovereign states are the ultimate decision-makers. Nevertheless, despite its simplicity, this solution contains all the flaws inherent in international agreements.

<sup>150</sup> Jahn (n 44) 991-992.

<sup>151</sup> Audrey Berry, "*Gilets jaunes : Comment rendre juste la taxe carbone et minimiser ses impacts sociaux?*" (16.11.2018 Le Monde) <[https://www.lemonde.fr/idees/article/2018/11/16/gilets-jaunes-comment-rendre-juste-la-taxe-carbone-et-minimiser-ses-impacts-sociaux\\_5384629\\_3232.html](https://www.lemonde.fr/idees/article/2018/11/16/gilets-jaunes-comment-rendre-juste-la-taxe-carbone-et-minimiser-ses-impacts-sociaux_5384629_3232.html)> Date of access October 12, 2021.

First, states cannot be forced to integrate international law into their domestic legal systems. Second, even if countries integrate international law into their domestic legal systems, they can alter domestic legislation or even constitutions that enable integration in the first place. Finally, and most importantly, even though the example of the Netherlands is in accordance with the national sovereignty-based current understanding of the global legal system, it contains a fatal flaw that stems from the fact that humanity must act very quickly.

As mentioned earlier, humanity has a limited amount of time in order to prevent a climate catastrophe. As one can imagine, necessary climate action may not be taken quickly enough if the priority is the consent and will of the 193 member states represented in the United Nations. Considering that humanity has nearly a decade left to avoid a climate catastrophe and the risk of reaching an irreversible tipping point,<sup>152</sup> the speed of action is as crucial as the action itself; thus, it is fair to assume that looking for each of the 193 states' consent might not be the most efficient way to take action before running out of time. Especially considering the right-wing populist movements' counterproductive policies and policymakers' general indifference towards voters' priorities, the paradigm which prioritises national sovereignty seems even more problematic.

Here, one might righteously express that there is no need for each of the 193 states to act because of the immense disparity regarding carbon emissions. Although this approach is practically accurate, it reveals another problem: countries that will face the most devastating effects of the climate crisis are not the ones who contribute the most to it. For example, the continents of Africa and Oceania will face the worst effects of the climate crisis<sup>153</sup>, although their contribution to the climate crisis is trivial in comparison.<sup>154</sup> Thus, different countries might have a different sense of emergencies; and very tragically, countries expected to face the worst consequences have minor political gravitas to stop the crisis in which their contribution is relatively small. As a result of this political reality, although the paradigm which prioritises national sovereignty seems to establish justice and equality between states, that paradigm actually creates a huge "climate injustice" between various countries and regions.

To summarise the flaws of the sovereigntist paradigm, consider the general apathy of policymakers towards the climate crisis, followed by the disparities between states. Even if the countries are viewed as homogeneous and equal entities (as the sovereigntist paradigm suggests), there is still a lack of legal tools to impose necessary policies on the states because their consent is prioritised.

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<sup>152</sup> See, Part I. A. 2. "Current and Possible Outcomes of the Climate Crisis".

<sup>153</sup> Germanwatch, "*Global Climate Risk Index 2021*" (25.01.2021 Reliefweb) <<https://reliefweb.int/report/world/global-climate-risk-index-2021>> Date of access May 29, 2021.

<sup>154</sup> Global Carbon Atlas, "*Country Emissions*" <<http://www.globalcarbonatlas.org/en/CO2-emissions>> Date of access May 29, 2021.

In conclusion, given the conundrum created by the current international system regarding the climate crisis and the vehemently limited amount of time to untie this incomprehensible conundrum, an ad hoc supranational authority that would free humanity's hands to avoid a possible climate catastrophe appears to be the most effective solution thus far. An ad hoc supranational authority (which would be limited to climate action) would implement crucial measures and enforce them by surpassing the states. Although the idea of such a supranational authority is in direct conflict with the concept of a sovereign state; it shall be emphasised that the concept of the sovereign state is also a relatively new concept<sup>155</sup>, even though contemporary humans experience its omnipresence today. Therefore, humanity's interaction with the environment is much older and more intense than its interaction with the concept of sovereign states. While it is evident that humans can survive and thrive in the absence of sovereign states, the scientific projections clearly reflect that a possible climate catastrophe could be a bitter blow to humanity<sup>156</sup>.

### **b. Embracing the Anthropocene by Technological Tools**

Both the Kyoto Protocol and the Paris Agreement envisage a negative approach towards the human effects on nature; namely, they are aimed at decreasing humanity's effects (carbon emissions) on nature. This perspective reflects the mentality that human impacts on nature are necessarily evil and ignores the possibility of a "good Anthropocene".<sup>157</sup> Although the current trend of the Anthropocene seems clearly devastating for humanity, it does not necessarily mean that there could not be a good version. Furthermore, because the humanities' effects on nature are so omnipresent and ancient; By some, it is thought that efforts to preserve a pre-Anthropocene world are just anachronistic.<sup>158</sup>

Indeed, there are proposals that humans can actively contribute to creating a more liveable and viable Earth. Thus, we shall not only try to prevent climate catastrophe by simply reducing carbon emissions, but we shall also positively act to create a more liveable planet for future generations. One of the best candidates for these solutions is the "carbon capture" technology. Although there are several versions of this technology<sup>159</sup>, the main principle is to capture CO<sub>2</sub> from the atmosphere. Even though this technology has the potential to be beneficial, it is currently insufficient to have a meaningful impact on the critical timeline required.

<sup>155</sup> Oona A. Hathaway, "International Delegation and State Sovereignty" (2008) 71 *Law and Contemporary Problems* 115, 146.

<sup>156</sup> UN (n 19).

<sup>157</sup> Ellis (n 4) 4.

<sup>158</sup> *Ibid* 103.

<sup>159</sup> Najmus Sifat and Yousef Haseli, "A Critical Review of CO<sub>2</sub> Capture Technologies and Prospects for Clean Power Generation" (2019) 12(21) *Energies* <<https://www.mdpi.com/1996-1073/12/21/4143/htm>> Date of access November 12, 2021.

According to the European Academies Science Advisory Council's (EASAC) report on negative-emission technologies (namely: afforestation and reforestation, land land management to increase and fix carbon in soils, bioenergy production with carbon capture and storage, enhanced enhanced weathering, direct capture of CO<sub>2</sub> from ambient air with CO<sub>2</sub> storage, ocean ocean fertilisation to increase CO<sub>2</sub>), all of the current negative-emission technologies are insufficient to fulfil the goals of the Paris Agreement, even though they might become useful in the long term.<sup>160</sup>

Considering the limited time before a climate catastrophe, reducing human emissions seems the only viable approach, despite the future potential of the above-mentioned technologies. Thus, since we cannot positively reduce our emissions, we need to produce fewer emissions. This, in turn, means that we cannot keep business as usual in terms of carbon emissions because we will not have *deus ex machina* technologies which will let us produce carbon emissions as much as we like.

### Conclusion

It is clear that the climate crisis will have adverse effects on the living conditions of many people and will lead to the displacement of a considerable number of people. Therefore, the climate crisis will transform the refugee phenomenon, which is already a problematic issue, into a deep crisis. Climate refugees are at the crossroads of these climate and refugee crises, and solving these crises is not only essential for them but also for the rest of humanity. In that sense, after revealing the crisis, we examined whether the existing protection mechanism could be a remedy.

In this context, we first evaluated whether climate refugees are within the scope of the Refugee Convention, the fundamental legal document under refugee law. However, like many other authors, we argue that due to the contingent nature of the Refugee Convention, it is challenging, if not impossible, for climate refugees who are solely based on the climate crisis to acquire refugee status under the Refugee Convention. Yet, the Refugee Convention is not the only means by which individuals seeking refuge can be protected. States also have protection obligations stemming from Human Rights Law. Accordingly, we determined that the right to life and prohibition of ill treatment are fundamental rights that can be a basis for climate refugees to seek asylum in other countries.

An important decision that will pave the way for the protection of climate refugees within the framework of Human Rights Law is the *Ioane Teitiota v. New Zealand* decision of the HRC dated 2019. With this decision, it was accepted for the first time in international law that the climate crisis could result in a violation of the right to

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<sup>160</sup> EASAC, "Negative emission technologies: What role in meeting Paris Agreement targets?" (2018) 1-11 <[https://easac.eu/fileadmin/PDF\\_s/reports\\_statements/Negative\\_Carbon/EASAC\\_Report\\_on\\_Negative\\_Emission\\_Technologies.pdf](https://easac.eu/fileadmin/PDF_s/reports_statements/Negative_Carbon/EASAC_Report_on_Negative_Emission_Technologies.pdf)> Date of access November 10, 2021.

life. Conversely, Human Rights Law is fundamentally inadequate in resolving the climate refugee crisis because of both its ex-post justice nature and its individualised solution offering structure. Moreover, the non-refoulement obligation under Human Rights Law arises if only relevant rights are violated above a certain threshold. Therefore, considering that the adverse effects of the climate crisis would emerge slowly but steadily in most cases, we can assert that the limited protection stemming from Human Rights Law is of even more limited character for climate refugees. As a result, it is fair to assert that no adequate protection instrument in international law can offer a comprehensive remedy for climate refugees.

On the other hand, there are concrete efforts on a regional scale to protect climate refugees, but these regional efforts are insufficient despite a global crisis. Current inadequate efforts focus only on the superstructure of the problem, that is, eliminating the grievances of climate refugees. However, the phenomenon that would cause the refugee crisis is the climate crisis itself. To solve the refugee crisis, the focus should also be on combating the climate crisis. Moreover, empirical studies have revealed that even if the climate crisis is successfully managed, a certain number of climate refugees are inevitable. Hence, the climate refugee crisis has a two-pronged solution, addressing the grievances of climate refugees and combating the climate crisis; these solutions should be offered on a global scale in the face of a global crisis. In this respect, the solution passes through the joint work of sovereign states, that is, international organisations.

The main obstacle standing in front of both in the elimination of the grievances of climate refugees and the effective fight against the climate crisis is the understanding of the sovereign state on which international law is based. Sovereign states are reluctant to come up with a comprehensive solution to the problem because it will fundamentally cause great financial burden and change production methods. Moreover, it shall be emphasised that even though public opinion favours climate action, state policies and legislation do not necessarily correlate with public opinion.

In conclusion, in order to comprehensively address the problem and enable climate refugees' benefit from "refugee status", enactment of a new convention or an annex to Refugee Convention, as well as the foundation of an ad hoc international organisation has to be considered to fight the climate crisis. While technological progress has the potential to assist future legal policies, as it enables the tracking of effects and keeps people masses connected, it cannot replace the impacts of legal and political implementations in the short term. Thus, considering the limited amount of time for climate action, it is no more than a futuristic fad to expect technological progress to become *deus ex machina* which would replace legal and political tools. Consequently, it is not realistic to ascribe such a role to technology.



Yet, all of our proposals are based on the consent of sovereign states, which are the main subjects of international law, and it remains to be questioned how the interest groups that the management of these states have, despite the majority of the people, will approve this transformation. In the end, the effectiveness of our proposals remains on the consent of sovereign States, as well as the interest groups' approval to transform ongoing production and recycling models into more environmentally friendly and sustainable models that enable people to survive in their homelands, develop participation models to reduce the existing effects of climate change on communities, and take precautions to control negative effects, especially on the poorest parts of the world.

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**Peer-review:** Externally peer-reviewed.

**Conflict of Interest:** The author has no conflict of interest to declare.

**Grant Support:** The author declared that this study has received no financial support.

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