

LEGAL PROTECTION OF DISPLACED PERSONS DUE TO DISASTERS*

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ABSTRACT

Changes in vital environmental conditions have been an important determinant that triggered and shaped the migration movement throughout the human history. Indeed, they are an ongoing phenomenon for people to leave their permanent residence individually or collectively, compulsory or optionally, permanently or temporarily, and migrate to another place in their country or directly to another country. Remarkably, today, migration movements as a result of environmental disasters caused by human and/or nature, especially hydro-meteorological and climatological disasters triggered by climate change suddenly or over time, have tended to become systematic and have become the most fundamental reason for forced migration and is regarded as a vital issue.

The diversity of appearance of forced migrations due to environmental disasters reveals the necessity of making a conceptual definition but at the same time, the question of what kind of legal protection immigrants can benefit from should also be answered. This study aims to define the environmental forced migration phenomenon, which has emerged as the biggest ecological, humanitarian, security and sustainabi-

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lity crisis of the 21st century, to conceptualize those who have been displaced due to environmental reasons and to answer the question of how these people can benefit from effective and adequate legal protection.

Keywords: Disaster, Climate Change, Environmental Forced Migration, Environmentally Displaced Persons, Human Rights

Introduction

In the face of changes in their environmental conditions, people tend to leave their permanent residence individually or collectively, compulsory or optionally, permanently or temporarily, and migrate to another place or directly to another country. In the case of a hard factor such as environmental disasters,¹ the migration movement appears as an aspect of survival anxiety, which is an extension of the right to live. It is a very old phenomenon that people have to leave their living spaces in order to secure their lives due to human and/or natural disasters. However, the increase in population density, the rate of urbanization and the risky living spaces associated with them, and the continuation of human-induced greenhouse gas emissions without slowing down cause the migration waves to become crowded, frequent and widespread. Organizations that monitor human mobility in the world, such as the Internal Displacement Monitoring Center (IDMC), International Organization for Migration (IOM), UN Office for Disaster Risk Reduction (UNISDR), United Nations High Commissioner for Refugees (UNHCR) draw attention to the determinant role of global climate change in these disasters.² As a matter of fact, since the mid-2000s, hydro-

¹ Sture Öberg, 'Spatial and Economic Factors in Future North-South Migration', in W. Lutz (ed), *The Future Population of the World*, (Earthscan 1996), 371

² Sylvain Ponserre and Justin Ginnetti, *Disaster Displacement: A Global Review 2008-2018*, (IDMC 2019); IDMC, *Global Report on Internal Displacement 2020*, (IDMC 2021); IOM, *Migration and Environment*, (IOM and the Refugee Policy Group 1992); IOM, *The State of Environmental Migration*, (IOM 2010-2021); UNHCR, *The Environment & Climate Change*, (UNHCR 2015); UNHCR, *Climate change, disaster and displacement in the Global Compacts: UNHCR's perspectives*, (UNHCR 2017); UNHCR, *Global Trends Forced Displacement in 2019*, (UNHCR 2020); UNHCR, *Global Trends Forced Displacement in 2010*, (UNHCR 2021); UNISDR

meteorological and climatological disasters have become a major driver of population displacement all over the world. Moreover, the future scenarios reveal the danger that this human mobility, which is expressed as hundreds of millions of people today, will turn into a mass migration of billions of people in the coming decades.³ Statistics and forecasts show us how accurate the IPCC's warning in the early 90s was,⁴ that it could turn into a serious humanitarian crisis with the waves of migration triggered by the climate crisis.

According to the data of the IDMC and the UNISDR, more than 362 million people left their living spaces between 2008 and 2020. It is stated that approximately 90% of this mobility is experienced due to weather and climate-related disasters. Moreover, it has been concretely demonstrated that migrations caused by disasters create massive migrations. In 2020 alone, more than 30 million people forced to leave their settlements because of environmental disasters. It is emphasized that this number is the highest recorded since 2012 and triples the rate of displacement due to conflict and violence.

How to manage the waves of migration, whose numbers are expressed in tens of millions today and which are expected to reach hundreds of millions in the coming decades, how to protect the immigrants, how to ensure social peace and security, and how to prevent possible ecological destruction of migration waves are the questions that await answers before the international community. In this context, firstly, the question of how to define and conceptualize those who have

and CRED, *The Human Cost of Weather Related Disasters 1995-2015*, (UNISDR and CRED 2015); Nansen Initiative, *Protection Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, (2015) <<https://nanseninitiative.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf>> Retrieved on 12.08.2021

³ Norman Myers, 'Environmental Refugees in a Globally Warmed World', (1993) 43, *Bioscience*, 752–761; Nicholas Stern, *The Economics of Climate Change: the Stern Review*, (Cambridge University Press 2006), 20, 77; IPCC, *Summary for Policymakers In Climate Change 2007: Impacts, Adaptation and Vulnerability Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, (Cambridge University Press 2007), 10; Frank Laczko and Christine Aghazarm (eds), *Migration, Environment and Climate Change: Assessing the Evidence*, (IOM 2009)

⁴ IPCC, W.J.McG. Tegart, G.W. Sheldon & D.C. Griffiths (eds), 'Policymakers' Summary', *Climate Change: The IPCC Impacts Assessment* (1990), 20

to leave their habitats due to environmental disasters as a disadvantaged group will be answered (1.). After mentioning the lack of an international protection regime that provides legal recognition and protection for those who had to leave their settlements due to environmental disasters (2.), an answer will be sought to the question of how to fill the existing legal gap on this issue (3.).

1- Those Displaced by Environmental Disasters as a Disadvantaged Group

Regardless of its source and time of occurrence, in the event of a disaster, women-men, children-adults-elderly, disabled-undisabled, citizen-foreigners, minority-majority, rich-poor, black-white, faithful-non-believer, regardless of the political-apolitical distinction, it affects the living conditions and livelihood opportunities of everyone, and contains a serious and widespread threat to the use and realization of fundamental rights. The survival anxiety that arises in the face of these vital threats compels individuals, families, groups of individuals and communities to leave their places.

In order for those who leave their living spaces to be considered as a separate disadvantaged group in the face of disasters that can be defined as an environmental problematique,⁵ leaving the living space must be forced.⁶ This is necessary so that those who are the subject of mass and irregular migration waves, triggered by hydro-meteorological and climatological disasters, whose number, severity and frequency have

⁵ For an explanation of the concept of environmental problematique, see Nühket Yılmaz Turgut, *Çevre Politikası ve Hukuku*, (2nd edn, İmaj Yayınevi 2017), 2 et al.; Ruşen Keleş, Can Hamamcı, Aykut Çoban, *Çevre Politikası*, 8nd edn, İmge Kitabevi 2015), 53 et al., 153 et al.; Ahmet Güneş, *Çevre Hukuku*, (2nd edn, Adalet Yayınevi 2019), 28-30

⁶ Essam El-Hinnawi, *Environmental Refugees*, (United Nations Environment Programme 1985), 4; Susana Adamo, 'Environmentally Induced Population Displacements', (2009) 1, *IHDP Update*, 16; Bonnie Docherty and Tyler Gianni, 'Confronting a Rising Tide: A Proposal for a Convention on Climate Refugees', (2009) 33, *Harvard Environmental Law Review*, 361; Frank Biermann and Ingrid Boas, 'Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees', (2010) 10, *Global Environmental Politics*, 67; Michel Prieur, 'Quel statut pour les déplacés environnementaux?', in Anne-Marie Tournepiche (ed.), *La Protection Internationale et Européenne des Réfugiés La Convention de Genève du 28 Juillet 1951 Relative au Statut des Réfugiés À l'Épreuve du Temps*, (Pedone 2014)

increased and become widespread, can be protected effectively and without exception, especially with global climate change. Because when it comes to environmental factors, migrations show a variable continuity, ranging from a planned choice to improve socio-economic conditions to being the last resort for survival.⁷

At this point, it would be appropriate to define the criterion of necessity according to the subjective conditions of individuals and societies at risk or endangered, and the severity, proximity and reality of the deterioration in their vital environmental conditions that trigger their survival concerns. Subjective conditions of individuals and societies mean that the criterion of necessity may vary according to the vital importance of the threatened environmental values in every concrete situation for the persons and groups of persons concerned. To be concrete, the negative impact of climate change on biodiversity points to a decrease in the welfare level in 'Northern' societies and therefore the optional migration to be experienced, while in 'Southern' societies this depletion or decrease raises an existential threat and therefore changes the nature of migration to be experienced.⁸

The criteria of seriousness and reality are more objective and are shaped according to the disaster risk in a place, the fragility level of the relevant society, and their capacity to struggle and adapt. Adaptation capacity of societies shaped by variables such as the geographical characteristics of the affected place, the socio-economic level of the society, its social structure, knowledge, science and skills, technological development level and physical infrastructure play a decisive role in environmental disasters and in particular in the extent of climate change and the environmental negative effects it triggers.⁹ Moreover, we can state

⁷ Graeme Hugo, 'Environmental Concerns and International Migration', (1996) 30(1), *International Migration Review*, 107

⁸ Seda Yurtcanlı Duymaz, *İklim Değişikliği, Afetler ve İnsan Hakları: Çevresel Zorunlu Göç*, (Adalet Yayınevi 2021), 77

⁹ Rana İzci, 'İklim Değişikliği ve Uyum (Adaptasyon) Sorunu', in Etem Karakaya (ed.), *Küresel Isınma ve Kyoto Protokolü İklim Değişikliğinin Bilimsel, Ekonomik ve Politik Analizi*, (Bağlam 2008), 93; Sandra Banholzer, James Kossin, Simon Donner, 'The Impact of Climate Change on Natural Disasters', in Ashbindu Singh and Zinta Zommers (eds), *Reducing Disaster: Early Warning Systems For Climate Change*, (Springer 2014), 24-25; Alice Poncelet, 'Bangladesh, un pays fait de catastrophes: La

that this criterion has reached a spiral of fragility that is difficult for non-resilient societies in the context of the global climate crisis.¹⁰ As a matter of fact, the primary effort of fragile states and societies to have the ability to combat climate disasters will be to reach the upper-income group in order to increase their combat capacity. However, despite being the most important cause of climate change, the global economic order still relies on the use of fossil resources. Moreover, the global climate regime accepts this reality and yet does not foresee an effective mechanism to prevent greenhouse gas emissions.¹¹ Therefore, when fragile societies seek to develop their coping capacities, they are in danger of being exposed to more severe, systematic and increasingly difficult hydro-meteorological and climatological disasters.

Proximity, on the other hand, is the criterion by which the debates on the necessity of migration can be experienced at the highest pitch. What is the 'proximity of danger' situation that will legitimize the necessity of migration in disasters that occur over time, such as soil loss due to rising sea levels, pollution of fresh water and fertile agricultural lands

vulnérabilité environnementale et la migration forcée', (2010) 1284, *Hommes et migrations*, 16 et al

¹⁰ Yurtcanlı Duymaz, İklim Değişikliği, Afetler ve İnsan Hakları (n 8) 59. In the context of the concept of environmental and climate justice, see Defne Gönenç, 'Çevresel Adalet', in Zerrin Savaşan, Çağlar Söker, Fırat Harun Yılmaz (eds), *Çevre Hukuku ve Politikaları Kavramlar, Teoriler ve Tartışmalar*, (Seçkin 2021), 103. See also Merve Suzan Ilık Bilben, 'İklim Hareketliliği', in Zerrin Savaşan, Çağlar Söker, Fırat Harun Yılmaz (eds), *Çevre Hukuku ve Politikaları Kavramlar, Teoriler ve Tartışmalar*, (Seçkin 2021), 282

¹¹ Global climate regime structured an order favoring the continuity of consumption, use and production of fossil resources by stressing that the rightful priorities of the developing countries are ending poverty and reaching sustainable development, and therefore the necessary standards and rules for combatting the climate should not bring an 'unjust' burden on themselves economically and socially. Framework Convention on Climate Change (UNFCCC), Int., par. 3; par. 9; par. 20; par. 21, art. 4§10 and 4§1(f). This is because the global climate regime accepted expressly that the obligation to decrease emission should not block the economic, social and cultural improvement and development capacity, or otherwise this would constitute intervention to human rights in other ways. Jean-Jacque Gouguet, 'Réfugiés écologiques: un débat controversé', (2006) 4, *Revue Européenne de Droit de l'Environnement*, 32; Dinah Shelton, 'Equitable utilization of the atmosphere: a rights-based approach to climate change?', in Stephen Humphreys (ed.), *Human Rights and Climate Change*, (Cambridge University Press 2010), 112

that meet vital needs, continuous flooding due to the melting of glaciers, and desertification? It is important to determine from when to start. At this point, reducing migration to a survival strategy and waiting for fragile societies to completely lose their safe living conditions in order to be forced to migrate, together with the fact of the fragility spiral above, would mean adding climate injustice to the existing climate inequality.¹² Therefore, Ioane Teitiota, who applied for the recognition of 'climate refugee' status for the first time in the world, said that although his hometown of Kiribati, which has been a small island state since 2005, has not been lost under water to a degree that makes it impossible to live, and despite the systematized hydro-meteorological disasters. Even if a large part of the island's population still has not left their settlements, it should be considered as a serious potential victim at the point of emergence of survival anxiety and migration movement should be considered necessary.

The process of occurrence of disasters, their incidence and severity, and the variations in their impact areas and results increase the diversity of appearance of the environmental forced migration movement. This leads to the formation of a 'heterogeneous' group¹³ that has to leave their residence due to environmental disasters. This heterogeneous nature causes differentiation of the timing, direction, duration and subjects of the environmental forced migration movement.¹⁴

¹² Rupert Colville, 'Réfugié ou migrant?', (2007) 18(4), Réfugiés, 2; Prieur, 'Quel statut' (n 6) 127; Patrick Gonin and Véronique Lassailly-Jacob, 'Les réfugiés de l'environnement, une nouvelle catégorie de migrants forcés?', (2002) 18, Revue Européenne des Migrations Internationales, 2; Véronique Lassailly-Jacob, 'Une nouvelle catégorie de réfugiés en débat', (2006) 4, Revue Européenne de Droit de l'Environnement, 374 vd.; Seda Yurtcanlı Duymaz, 'Çevresel Nedenlerle Yerinden Olanlar', in Zerrin Savaşan, Çağlar Söker, Fırat Harun Yılmaz (eds), Çevre Hukuku ve Politikaları Kavramlar, Teoriler ve Tartışmalar, (Seçkin 2021), 233

¹³ Christel Cournil and Pierre Mazzega, 'Catastrophes Écologiques et Flux Migratoires: Comment Protéger Les Réfugiés Écologiques?', (2006) 4, Revue Européenne de Droit de l'Environnement, 418

¹⁴ See Koko Warner and Tamer Afifi (eds), Environmental Change and Forced Migration Scenarios (EACH-FOR), (UNU-EHS 2009); Laczko and Aghazarm, (n 3); The Government Office for Science, Foresight: Migration and Global Environmental Change, (2011); Chloé Vlassopoulou and François Mancebo (eds), Rapport Scientifique Exclim, Exil climatique: Gérer les déplacements des population, Gestion et Impacts du Changement Climatique, (2013); Etienne Piguet and Frank Laczko (eds),

In sudden disasters, vital environmental conditions deteriorate predominantly at the local level, in reparable dimensions and for everyone in the affected area. For this reason, migrations with the aim of survival are mostly of a collective nature, and the masses tend to migrate temporarily¹⁵ to the peripheries of the city they live in, to a neighboring city or to another region in the country they live in. At this point, it should be stated that there should be no other reasonable settlement alternative in the country of origin in order for the movement of out-of-country migration to be considered within the scope of forced migration.¹⁶ Since the deterioration of vital environmental conditions in disasters that develop over time, the necessity of migration differs according to the subjective conditions and individual adaptation capacities of the affected people. For this reason, migrations can be collective as well as individual. In the face of disasters that develop over time due to the deterioration of vital environmental conditions on a larger scale, serious and often irreversible, individuals tend to migrate to other countries' lands permanently and predominantly with the urge to survive.

On the other hand, although the relationship between disaster and migration comes to the fore mainly in the context of climatic disasters, as stated above, there is no difference between disaster types in terms of the aim of establishing a dignified life and the emergence of basic and special needs. In other words, if an extreme weather event is not caused by climate change, a volcanic eruption, a hydro-meteorological disaster or a nuclear power plant accident can displace millions of people, even if

People on the Move in a Changing Climate, (Springer 2014); Dina Ionesco, Daria Mokhnacheva, François Gemenne, Atlas Des Migrations Environnementales, (IOM and SciencesPo 2016)

¹⁵ Extreme weather events, which have increased significantly in recent years, tend to turn into recurring crises from being isolated in some places. In this case, people who have to leave their homes chronically in the face of sudden but systematized disasters push them to seek safer living areas in the long run and may make their migration permanent. Angela Williams, 'Turning the Tide: Recognizing Climate Change Refugees in International Law', (2008) 30, Law and Policy, 522; Michelle Yonetani, 'Disaster-related displacement in a changing climate', (2016) 65(1), World Meteorological Organization Bulletin

¹⁶ Benoit Mayer, 'Critical Perspective on the Identification of 'Environmental Refugees' as a Category of Human Rights Concern', in Dimitra Manou, Andrew Baldwin, Dug Cubie, Anja Mihr, Teresa Thorp (eds), Climate Change, Migration and Human Rights: Law and Policy Perspectives, (Routledge, 2017), 31

it is not a natural disaster. In the search for solutions, it is essential to define a comprehensive new disadvantaged group in order not to create new inequalities and injustices and not to allow arbitrariness in the obligation to protect in practice.¹⁷

In this context, those who are displaced due to environmental reasons: 'Individuals who are forced to leave their habitats to another place within the country or to another country for a justified or temporary reason, urgently or in the process, due to a human and/or natural disaster that endanger their survival conditions suddenly or over time, refers to families, groups of individuals and local communities'.¹⁸ Within the scope of this definition, 'disaster' is the environmental degradation process that causes an inevitable turmoil in living conditions, either suddenly or gradually, with the contribution of an environmental phenomenon originating from human and/or nature.¹⁹ The answer to the question of whether this disadvantaged group, which is expressed in tens of millions today, benefits from an effective and sufficient protection in the international legal order should be sought.

2- The Silence of the Law Against the Environmentally Displaced

¹⁷ François Gemenne, *Géopolitique du changement climatique*, (Armand Colin 2009), 78; Christel Cournil and Pierre Mazzega, 'Réflexions prospectives sur une protection juridique des réfugiés écologiques', (2007) 23(1), *Revue européenne des migrations internationales*, 22; Véronique Magniny, 'Des victimes de l'environnement aux réfugiés de l'environnement', (2008) 6, *Revue Asylon(s)*, 18; Walter Kalin, 'Disaster Displaced Persons in the Age of Climate Change: the Nansen Initiative's Protection Agenda', in Flavia Zorzi Giustiniani, Emanuele Sommario, Federico Casolari, Giulio Bartolini (eds), *Routledge Handbook of Human Rights and Disasters*, (Routledge 2018), 352; Jane McAdam, 'Swimming against the tide: why a climate change displacement treaty is not the answer', (2011) 23, *International Journal of Refugee Law*, 13; Benoit Mayer, 'Climate Migration Governance', in Walter Leal Filho (ed), *Handbook of Climate Change Adaptation*, (Springer 2014), 835

¹⁸ Yurtcanlı Duymaz, *İklim Değişikliği, Afetler ve İnsan Hakları* (n 8) 301

A similar comprehensive definition is envisaged in the Draft Convention on the Status of Environmentally Displaced Persons prepared by french academics. According to art. 3 of this Draft, "Environmentally Displaced Persons' means individuals, families, groups and populations facing a sudden or insidious upheaval in their environment that inevitably endangers their living conditions, forcing them to leave, urgently or in the long term, their usual places of life."

¹⁹ Yurtcanlı Duymaz, *İklim Değişikliği, Afetler ve İnsan Hakları* (n 8) 302

The international legal order has foreseen some special protection regimes for those who have left their residence forcibly. These protection regimes are basically diversified according to the direction of the forced migration movement. In this context, the 1951 Geneva Convention Relating to the Status of Refugees and the 1998 Guiding Principles Regarding Internally Displaced Persons appear as special protection arrangements at the international level.

The 1951 Geneva Convention on refugee status deals with the forced migration of a person to other countries who have a justified fear of being persecuted because of their race, religion, nationality, membership of a particular social group or political opinion, not wanting to benefit from the protection of the country in which they reside.²⁰ Refugee status provides individual protection and covers only out-of-country migration movements. Although the phenomenon of disaster is considered a justified fear of persecution,²¹ and the idea of recognizing the status of 'climate refugee' has been put forward in the context of proposals such as broad interpretation of membership of a particular social group on the axis of disaster victims,²² it should not be forgotten that such a concept will appeal to a group of forced migrants for a limited environmental reason.

Undoubtedly, the use of the concept of refugee has an important contribution in embodying the grievances, vulnerable conditions and struggle for survival that arise with the environmental forced migration phenomenon, and in perceiving the issue as a serious human rights issue. Moreover, some authors state that the use of the word refugee is politically remarkable in terms of emphasizing the responsibilities of the developed countries, which are the main culprits of the global climate cri-

²⁰ 1951 Convention relating to the Status of refugees, art. 1

²¹ Fabienne Quillere Majzoub, 'Le droit international des réfugiés et les changements climatiques: vers une acceptation de l'ecoprofugus?', (2009) 86(4), *Revue de droit international et de droit comparé*, 629; Christopher Kozoll, 'Poisoning the Well: Persecution, the Environment, and Refugee Status', (2004) 15(2), *Colorado Journal of International Environmental Law and Policy*, 297; Jessica Cooper, 'Environmental refugees: meeting the requirements of the refugee definition', (1998) 6, *New York University Environmental Law Journal*, 486-487

²² Cooper, (n 21) 522 et al.; Laura Westra, *Environmental Justice and the Rights of Ecological Refugees*, (Eathscan 2010), 32

sis, in the migration waves.²³ But it is not legally and technically appropriate to use the concept of refugee, which also expresses a legal status, for those who have to leave their living spaces due to disasters.

First of all, it should not be forgotten that the survival anxiety that arises in the face of the destructive effects of environmental disasters that 'persecute' the person is not of a subjective nature as in the Geneva Convention. As a matter of fact, in the case of disasters, it is seen that situations that trigger survival anxiety occur according to objective criteria such as the risk of living spaces and the adaptability and struggle capacity of the state.²⁴ Even if the negligence of the competent national authorities in the disaster process management, their violation of the duty of care and even their violations trigger the migration movement, the tendency of the people not to leave the country they live in due to the disasters in practice or even if they migrated to other countries, the wounds are healed in the disaster area and the living conditions improve. It is seen that the bond of citizenship has not been broken due to the tendency of

It is useful to mention two supporting reasons that reveal the inconvenience of refugee status in the context of climate change. The first of these reasons is related to the understanding of the 'clearness of the

²³ Jane McAdam, *Climate Change, Forced Migration, and International Law*, (Oxford University Press 2012), 39; Anthony Richmond, 'The Environment and Refugee: Theoretical and Policy Issues', (1995) 39, *Bulletin Démographique des Nations Unies*; François Gemenne, 'L'anthropocène et ses victimes: une réflexion terminologique', in François Gemenne (ed.), *L'enjeu mondial: l'environnement*, (Presses de Sciences Po 2015). It is also interpreted that the concept of statelessness may be effective in the political protection of the island peoples who forced to migrate, especially in the face of the risk of the actual extinction of the small island states. See Benoit Mayer and Christel Cournil, 'Climate Change, Migration and Human Rights: Towards Group-Specific Protection?', in Ottavio Quirico & Mouloud Boumghar (eds), *Climate Change and Human Rights An International and Comparative Law Perspective*, (Routledge 2016), 182

²⁴ The fact that the causality relationship between disaster and forced migration is based on such objective criteria eliminates the possibility of directly defining those who migrate due to disasters as a 'membership of a particular social group'. Yurtcanlı Duymaz, *İklim Değişikliği, Afetler ve İnsan Hakları* (n 8) 99. As a matter of fact, the decision of the French Council of State that those who were affected by the Chernobyl nuclear disaster and had to leave their country cannot be accepted as a 'particular social group' stipulated in the Geneva Convention supports this interpretation. *Conseil d'État, Mme Drannikova*, n°185837, 15 March 2000

persecutor' and the 'personality of the persecutor'.²⁵ Climate change, which is a global environmental problem, is a climate disaster because it has emerged with the cumulative effect of historical and current greenhouse gas emissions of all states, especially industrialized states, and negatively affects the life, health, safety, access to vital basic needs, and livelihood of everyone within its sphere of influence. We cannot talk about a single responsible state and a single victim in the migration relationship.²⁶ Therefore, in a climatic disaster that triggers migration, there is no apparent cruel authority or oppression against the person. The second supporting reason is the incompatibility of the concept of 'tyrannical state' that we encounter in refugee status with the migration movement due to climatic disasters.²⁷ In particular, the migrations of the small island peoples show us that there is a movement from the 'victim state', which does not have an effective and sufficient adaptation capacity due to its limited role in global warming in climatic disasters, to the 'cruel states', which are the main actors of global warming.²⁸ In other words, we are faced with the concept of a tyrannical state that receives immigrants, not immigrants. For all these reasons, it is not appropriate to use the concept of refugee for those who leave their living spaces due to disasters.

Another regulation dealing with forced migration in the international legal order is the Guiding Principles on Internal Displacements: *'internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.'*²⁹ The Guiding Principles on the

²⁵ Yurtcanlı Duymaz, İklim Değişikliği, Afetler ve İnsan Hakları (n 8) 106

²⁶ Stephen Humphreys, 'Introduction: Human Rights and Climate Change', in Stephen Humphreys (ed.), Human Rights and Climate Change, (Cambridge University Press 2010), 1; Aurelie Lopez, 'The protection of environmentally - displaced persons in international law', (2007) 37, Environmental Law, 380; HRC, A/HRC/10/61, par. 70

²⁷ Yurtcanlı Duymaz, İklim Değişikliği, Afetler ve İnsan Hakları (n 8) 105

²⁸ McAdam, Climate Change, Forced Migration, and International Law, (n 23) 45

²⁹ Guiding Principles on Internal Displacements, Introduction, par. 2

issue are important because they clearly include all disasters³⁰ that occur suddenly or over time among the causes of forced migration, and address the environmental forced migration movement not only with its individual but also with its collective dimension. The text also includes mandatory evacuation practices to prevent disaster risks.

However, these Principles only cover forced migration within the borders of the country of residence. Therefore, those who are displaced due to environmental reasons who have to leave their country of residence do not fall within the scope of the Guiding Principles. Although the relevant regulation covers a very large proportion of migration due to disasters,³¹ it is difficult to say that it provides complete protection for those who are displaced due to environmental reasons. The main reason for this is that the Guiding Principles put forward by a group of independent experts have a limited effect, as they are accepted as the norm of support for the rights and needs-based management of internal forced migrations.³² In other words, this text could not go beyond being a part of soft law.³³

³⁰ The fact that displacement is not counted as a constraint in the definition and that the emphasis is placed on 'as a result of or in order to avoid the effects of' makes it possible to argue that the Principles have a suitable meaning to cover both sudden and gradual disasters. Christel Cournil and Benoît Mayer, *Les Migrations Environnementales Enjeux et gouvernance*, (Presses de SciencePo 2014), 66

³¹ According to data from IDMC, forced migration movement triggered by disasters in the world is basically experienced within the borders of the country. For detailed information, see <<https://www.internal-displacement.org/>> Retrieved on 01.08.2021

³² Res. AG 60/1, AG NU, 24 October 2005, Doc. NU A/60/1 par. 132; Elizabeth Ferris, *Climate Change and Internal Displacement: A Contribution to the Discussion*, Brookings-Bern project on internal displacement, Brookings Institution, Washington DC, 2014, p. 9; Walter Kalin, 'L'avenir des Principes directeurs relatifs au déplacement de personnes à l'intérieur de leur propre pays', (2007) 4, *Revue des migrations forcées*, 5; Roberta Cohen and Francis Deng, 'The Genesis and the Challenges', (2008), *Forced Migration Review*, 4

³³ Walter Kalin, *How hard is soft Law? The guiding principles on internal displacement and the need for a normative framework*, (2001), Ralph Bunche Institute Roundtable, City University of New York, 6; Christel Cournil, 'L'émergence d'un droit des personnes déplacées internes', (2009) 22(1), *Revue québécoise de droit international*, 7, 11 et al.; Jane McAdam, *Climate Change Displacement and International Law: Complementary Protection Standards*, Legal and Protection Policy Research Series, (UNHCR 2011), 57

States are in a political reluctance to transform the said regulation into a binding legal norm in the context of the principles of sovereignty and non-intervention on which international law is based, due to their sensitivity to the fact that the phenomenon of migration within the borders of the country remains an internal matter of a state.³⁴ Although it has been in force for more than twenty years, the lack of regularity and unity in practice³⁵ has led to the notion that states have a legal obligation to implement these principles. It is seen that even the forced migrants, who are entitled in line with the Guidance Principles, do not have sufficient knowledge and awareness about the rights and freedoms envisaged here.³⁶ In the light of all these reasons, it should be stated that the Guiding Principles cannot be qualified as a rule of practice.

Solution proposals to strengthen the Guiding Principles and turn them into a strict legal norm³⁷ are not suitable for providing adequate protection and fair burden sharing. It excludes out-of-country migration in terms of immigrants. In terms of the responsibility to manage migration, there is a risk that the spirit of international solidarity will turn into a protection obligation that falls on the country of origin where the migration takes place. Despite the fact of collective responsibility in climate change, the issue of managing environmental forced migrations caused by disasters triggered by these crises has the potential to be reduced to

³⁴ Cohen and Deng, (n 32) 4

³⁵ For example, the US interprets internal displacement as limited only because of an armed conflict. For this reason, he described those who left New Orleans due to Hurricane Katrina in 2005 as 'victims', 'survivors', and 'survivors'. Thus, the USA did not feel the need to act under the guidance of the Guiding Principles and did not make it felt to the public. On the other hand, those who left their habitats after flood and earthquake disasters in Haiti and Pakistan are defined as displaced within the scope of the Guiding Principles. Stéphanie Millan, 'Construction du Droit des personnes déplacées internes, victimes de catastrophes naturelles', in Christel Cournil and Chloé Vlassopoulos (eds), *Mobilité humaine et environnement: du global au local*, (Editions Quæ 2015), 55; Elizabeth Ferris, 'Assessing the impact of the Principles: an unfinished task', (2010), *Forced Migration Review*, 10; Shiva Dhungana, 'Time to apply the Guiding Principles in Nepal', (2008), *Forced Migration Review*, 27

³⁶ Ferris, 'Assessing the impact of the Principles' (n 35) 10

³⁷ In this context, Kalin states that a UN Convention on the rights of internally displaced persons can be adopted. Walter Kalin, 'The future of the Guiding Principles', (2008), *Forced Migration Review*, 38-39

the issue of countries where disasters are frequent, whose share in disasters is limited and therefore already fragile.

In the current international legal order, none of the special protection regimes dealing with forced migrations fully define a comprehensive disadvantaged group such as those who are displaced due to environmental reasons, and do not foresee an effective and sufficient protection mechanism for these people. Thereupon, various opinions have been put forward on the feasibility of establishing a subject-oriented protection regime specific to the phenomenon of global climate change. This approach, which was developed on the basis of the statistical superiority of those fleeing from hydro-meteorological and climatological disasters and the prediction that this superiority will continue exponentially, proposes to seek answers to the problem of forced migration in the context of global climate change. In this context, foreseeing the status of 'climate refugee' or 'climate change displaced persons',³⁸ accepting climatic forced migration as direct loss and harm,³⁹ forming adaptation policies by considering migration risk,⁴⁰ developing regional corporations on the axis of climatic forced migration phenomenon,⁴¹ adopting the principle

³⁸ Biermann and Boas, 'Preparing for a Warmer World' (n 6) 60-88; Frank Biermann and Ingrid Boas, 'Protecting Climate Refugees: The Case for a Global Protocol', (2008) 50(6), *Environment: Science and Policy for Sustainable Development*, 21-26; Docherty and Giannini (n 6) 349-403; David Hodgkinson and Lucy Young, 'In the Face of Looming Catastrophe: A Convention for Climate Change Displaced Persons', in *Threatened Island Nations*, Michael B. Gerrard, Gregory E. Wannier (eds), (Cambridge University Press 2013), 299-336; David Hodgkinson, Tess Burton, Heather Anderson, Lucy Young, 'The Hour when the Ship Comes In: A Convention for Persons Displaced by Climate Change', (2010) 36(1), *Monash University Law Review*, 69-120

³⁹ Doreen Stabinsky and Juan Hoffmaister, 'Establishing institutional arrangements on loss and damage under the UNFCCC: the Warsaw international mechanism for loss and damage', (2015) 8(2), *International Journal of Global Warming*, 310, 312-313

⁴⁰ Williams, (n 15) 519-520; Koko Warner, *Climate change induced displacement: adaptation policy in the context of the UNFCCC climate negotiations*, UNHCR, Legal and Protections Research Series, (UNHCR 2011)

⁴¹ Williams, (n 15) 503-504; Jane McAdam, *Environmental Migration Governance*, UNSW Law Research Paper No.1, (2009), 7-8

of common but differentiated responsibility in the protection of climate refugees and management of migration⁴² were brought to the agenda.

Due to the heterogeneity and breadth of the disadvantaged group that needs to be protected, we believe that proposals limited to climate change cannot provide a fair and just solution.⁴³ On the other hand, it is possible that the secondary status of human rights⁴⁴ in the global climate regime and the protection of those from their environmental places in the axis of the global climate regime is a product of a security-based approach. In this context, the possible reflex of the States Parties in the face of the phenomenon of forced migration, which is expressed as the most destructive humanitarian consequence of global warming, is a global climate that focuses on managing the phenomenon of migration with the

⁴² Peter Penz, 'International Ethical Responsibilities to 'Climate Change Refugees'', in Jane McAdam (ed.), *Climate Change and Displacement Multidisciplinary Perspectives*, (Oxford University Press, 2010), 151, 162

⁴³ Jean-Marc Lavieille, Julien Bétaille, Jean-Pierre Marguenaud, 'Présentation du Projet de Convention relative au statut international aux déplacés environnementaux', (2008) 12(4), *Revue Européenne de Droit de l'Environnement* 380; Yurtcanlı Duymaz, *İklim Değişikliği, Afetler ve İnsan Hakları* (n 8) 298

⁴⁴ The issue of protecting human rights against climate change and its effects has become a secondary issue of climate law. The regime focused on the economic consequences of global warming rather than its human and social consequences. As a matter of fact, the right to pollute the atmosphere has been granted to states and the private sector with the acceptance of various market mechanisms, despite the recognition and acceptance of the potential to cause serious destructive consequences. On the other hand, a regime has been designed to support the emission of the developing countries, where the dirty investments of the (multinational) companies, which are the main polluting actors, are predominantly on the grounds of the right to develop. The climate regime gave place to the discourse of rights for the first time with the Cancun Agreement adopted in 2010. Here, too, a limited understanding of respecting human rights has been put forward. As a matter of fact, the Paris Climate Agreement, which was adopted in 2015 and regulates the future of the climate regime, included the discourse of rights only in the introduction, although it coincided with a period when serious humanitarian crises were experienced and the sustainability of life was discussed. For detailed information, see Seda Yurtcanlı Duymaz, *25 Soruda İklim Değişikliği ve İnsan Hakları*, (Haklar ve Araştırmalar Derneği 2021); Daniel A. Farber, 'Climate Change and Disaster Law', in Kevin R. Gray, Richard Tarasofsky, Cinnamon Carlarne (eds), *The Oxford Handbook of International Climate Change Law*, (Oxford University Press 2016); Dorothée Lobry, 'Questions 'humanitaires et sécuritaires' et le cas particulier des 'réfugiés climatiques'', (2010), in *Dossier: Sommet de Copenhague, défi climatique, défi diplomatique*

concern of 'safety of the North' instead of reducing and limiting emissions with more realistic and effective targets to prevent climatic disasters.⁴⁵

As a result, it should be stated that the solution proposals focused on people and issues at the international level are not suitable and sufficient to protect the displaced due to environmental reasons. The current legal gap reveals the necessity of establishing a new legal regime regarding environmental forced migration.⁴⁶

3- Establishment of a New Protection Regime for Environmentally Displaced Persons

The new regime should be set up as a binding international agreement that supports bilateral or regional cooperation. Disasters, especially the global climate crisis, have different effects all over the world

⁴⁵ Benoit Mayer, 'Environmental Migration in the Asia-Pacific Region: Could We Hang Out Sometime?', (2013) 3, Asian Journal of International Law, 120; Andrea Liverani, 'Environmental Migration in the Middle East and North Africa', Centre for International Studies and Research, Sciences Po (2012); François Gemenne, "What's in a Name: Social Vulnerabilities and the Refugee Controversy in the Wake of Hurricane Katrina" in Tamer Afifi and Jill Jager (eds), Environment, Forced Migration and Social Vulnerability, (Springer 2010), 29, 36

⁴⁶ Prieur, 'Quel statut' (n 6) 126-157; Stéphane Doumbé-Billé, 'À la Recherche d'un Régime International pour les Déplacés Environnementaux', in D'Urbanisme et d'environnement, Liber amicorum Francis Haumont, (Bruylant 2015), 571-572; Gonnin and Lassailly-Jacop, 'Les réfugiés de l'environnement', 6; Dana Zartner Falstrom, 'Stemming the Flow of Environmental Displacement: Creating a Convention to Protect Persons and Preserve the Environment', (2002) 13, Colorado Journal of International Environmental Law and Policy, 1-30; Cournil and Mazzega, 'Réflexions prospectives' (n 17) 35; Christel Cournil, 'Les réfugiés écologiques: quelle(s) protection(s), quel(s) statut(s)?', (2006) 4, Revue du Droit Public, 1039 et al.; Gregory McCue, 'Environmental Refugees: Applying International Environmental Law to Involuntary Migration', (1993-1994) 6, Georgetown International Environmental Law, 151-190; Astrid Epiney, 'Réfugiés écologiques et droit international', in C. Tomuschat, E. Lagrange, S. Oeter (eds), The right to life, (Martinus Nijhoff publishers 2010), 397; Véronique Magniny, Les réfugiés de l'environnement: hypothèse juridique à propos d'une menace écologique, (Université Panthéon Sorbonne, 1999), 491-504; Monique Chemillier-Gendreau, 'Faut-il un statut international de réfugié écologique?', (2006) 4, Revue Européenne de Droit de l'Environnement, 450; Agnes Michelot, 'Vers un statut de réfugié écologique?', in Jean-Marc Lavieille, Julien Bétaille, Michel Prieur (eds), Les catastrophe écologique et le droit: échecs du droit, appels au droit, (Bruylant 2012), 527-530

due to the subjectivity of fragility conditions. For this reason, the coexistence of states with similar climatic destinies, disaster risks and vital concerns has the potential to produce fast, easy and effective solutions to manage environmental forced migrations, to protect those who were displaced due to environmental reasons, and to disseminate good management practices and experiences. However, a solution limited to bilateral agreements or regional cooperation carries the risk that the spirit of international solidarity in a humanitarian issue will turn into a protection obligation that falls on the relevant countries or neighboring countries in the region over time. However, embodying the spirit of shared responsibility in the face of the environmental forced migration phenomenon, which expresses a human condition in the Anthropocene era, would be a fair and equitable solution. In this context, the proposal of the 'International Convention on Environmental Forced Migration in the Context of Disasters',⁴⁷ as a global solution supported by bilateral and regional cooperation that allows good practice examples to become widespread, is actually put forward as a result of this 'realist' thinking.⁴⁸

The new regime should define displacement for an inclusive environmental reason in a way that allows to internalize the culture of prevention and should reveal a holistic understanding of environmental forced migration management. Parallel to the disaster process ma-

⁴⁷ Yurtcanlı Duymaz, İklim Değişikliği, Afetler ve İnsan Hakları (n 8) 337 et al.

⁴⁸ It is argued that dealing with environmental forced migrations, which are mainly within national borders, on an international level will be a waste of energy, time and resources and will not provide an effective solution; therefore, realism is based on bilateral and (or) regional cooperation. McAdam, 'Swimming Against the Tide', (n 17) 26; Williams, (n 15) 518, 521; Benoît Mayer, 'The International Legal Challenges of Climate-induced Migration: Proposal for an International Legal Framework', (2011) 22, Colorado Journal of Int. Env. Law and Pol., 408; François Gemenne, 'Créer un statut aux migrants environnementaux n'est pas une solution suffisante au problème', 7 Septembre 2011

However, this interpretation has been criticized for ignoring the heterogeneous nature of environmental displaced persons and the possibility of international migration. On the other hand, environmental forced migrations, which tend to become commonplace today, are not only a matter of those who have to leave their homes or the locals, but are closely related to the concepts of security, global peace and justice, human rights, poverty and development. Therefore, the global struggle against environmental disasters, which is the problem of humanity, and the phenomenon of forced migration triggered by them, is actually a result of realistic thinking

nagement, it should be designed as a holistic process management that covers the phenomenon of forced migration before, during and after. In this context, the disaster phenomenon that triggers environmental forced migration should be interpreted broadly to express the social paradigm⁴⁹ that reveals exposure to danger and vulnerability as well as the destructive event that causes damage. Defining the disaster phenomenon on the axis of the social paradigm will enable the prediction of a holistic process management mechanism in the form of preventing environmental forced migration risks, limiting their effects at the point where they cannot be prevented, and strengthening their capacity to cope with future risks.⁵⁰ As a matter of fact, projections for hydro-meteorological and climatological disasters, especially exacerbated, intensified and widespread by climate change, reveal the importance of eliminating this risk factor rather than managing the increasing risk of migration. Because the forced migrations, which are expected to increase in parallel with the disasters that are expected to increase, represent an issue that is more difficult to manage. Moreover, the irreversible consequences of ecological crises, especially climatic disasters, necessitate a preventive approach in terms of sustainability. Therefore, while establishing the legal framework for environmental forced migration, it should be ensured that not only those who are displaced but also those who are in danger of being displaced are protected.⁵¹ In this way, the deepening of inequality

⁴⁹ As a matter of fact, if a community has organized its socio-economic conditions in accordance with its natural and structural living environment, it will be difficult for disasters to occur or for environmental phenomena to have devastating consequences. Anthony Oliver-Smith, 'What is a Disaster? Anthropological Perspectives on a Persistent Question' in Anthony Oliver-Smith & Susanna Hoffman (eds), *The Angry Earth: Disaster in Anthropological Perspective*, (Psychology Press 1999), 25, 27

⁵⁰ In holistic process management, disasters are defined as a phenomenon arising from the weakness of the social system. Thus, an understanding of disaster management emerges, which is directed towards the elimination of deficiencies rather than discourses of fate and bad luck. The efforts of the international community on disaster management are parallel to this approach. Sendai Framework for Disaster Risk Reduction 2015–2030, A / CONF.224 / CRP.1, par. 6. Kristian Cedervall Laut, *Disaster Law*, (Routledge 2015), 20

⁵¹ Christel Cournil and Benoit Mayer, 'Opportunités et limites d'une protection catégorielle au bénéfice des migrants environnementaux', in Liliana Lyra Jubilut and Fernando Cardozo Fernandes Rei (eds), *Les minorités environnementales*, (Université Catholique du Santos 2015), 69. Some authors emphasize that the principle of ensuring material equality in human rights should be accepted as a basic reference at

against those who do not have the ability to migrate, who are in a more disadvantageous position in the face of disasters, is prevented.

The new regime should be established with an understanding that prioritizes the basic rights and needs of those who are at risk of environmental migration and those who migrate.⁵² The security-based understanding, which dominates the official discourse and policies and focuses on the question of how migration can be managed safely in terms of states, and is based on the idea that the immigrant-receiving societies will lose more, is a paradigm far from the environmental and social realities that make it obligatory to delve into the causes of environmental forced migration.⁵³ As a matter of fact, the fact that environ-

this point. Benoit Mayer, *The Concept of Climate Migration: Advocacy and its Prospects*, (Edward Elgar Publishing, 2016), 57

⁵² For the view on the necessity and the importance of human rights-based policing in the management of environmental threats and crises, see Shelton (n 11) 91-125; John Knox, 'Climate Change and Human Rights Law', (2009-2010) 50, *Virginia Journal of International Law*, 163-218; Marlies Hesselman, 'Establishing a Full 'Cycle of Protection' for Disaster Victims: Preparedness, Response and Recovery According to International Human Rights Supervisory Bodies', (2013) 18(2), *Tilburg Law Review*, 106-132; Jean-Marc Lavieille and Fernanda De Salles Cavedon Capdeville, 'L'indispensable consécration des droits de l'homme au profit des déplacés environnementaux victimes de catastrophes' in *Projet de CADHOM, Les Catastrophes et les droits de l'homme*, Tome 1, (ANR 2013), 459-473; Agence National de la Recherche, *Les catastrophes et les droits de l'homme, Le projet 'Catastrophes et Droits de l'Homme – CADHOM'*, Paris/Limoges, 2013

In order to be able to talk about a rights-based regime: 1) realizing human rights should be the main objective when developing policies, plans, programs and projects and determining measures. 2) Universal human rights texts, international and regional fundamental human rights conventions, principles and standards derived from international human rights law should guide all policies, planning and programming at all stages of the struggle process. 3) In order for the balance of rights and obligations to be effective, right holders and their rights, addressees and their obligations must be clearly defined. A/74/161, 15 July 2019, par. 62

We are of the opinion that the necessity of control mechanisms should be accepted as a fourth and important condition in order to secure a rights-based management approach in international regimes regarding environmental problems. Yurtcanlı Duyamaz, 25 Soruda İklim Değişikliği ve İnsan Hakları, (n 44) 36

⁵³ However, despite this reality, it is likely that the primary preference for environmental forced migration is the security approach. For example, the issue of environmental forced migration is handled by the UN's Security Council more loudly than universal human rights institutions in the international arena. The Council discusses the forced

mental disasters have serious and irreversible consequences on the existence, health, dignity of human being, who is an element of the ecosystem, and his socio-economic and political life, and the prevalence of this destructive reality show us that the issue cannot be reduced to crisis management alone. For this reason, in the face of environmental risks that seriously threaten social functioning, potential victims of migration can also ensure that the rights of the migrating peoples to survive in the face of environmental disasters that seriously disrupt social functioning, the opportunity to be healthy and access health services, and the ordinary basic rights and needs of life such as water, food and shelter. A legal status that will guarantee their rights to be met under extraordinary and extraordinary conditions, their right to a healthy, safe, clean and sustainable environment, their freedom to determine their living space, their family unity, their legal and physical security, their cultural identity, to protect their assets, and to fulfill the related rights and freedoms should predict. In this context, the new regime should include a wide range of rights and freedoms to provide protection against environmental forced migration, during and after migration.⁵⁴

In the axis of the prevention culture, it is essential to protect the individuals and individual communities against environmental forced migrations, and to protect the persons concerned against the risks of en-

migration movement caused by climate change as a threat to global peace and security. The first measures taken by the states in the fight against the Covid-19 epidemic, which has been described as another environmental crisis in the recent past, have focused on border security. The anxiety of the future created by the economic crisis conditions in the societies and xenophobia increased by populist discourses create the impression that an environmental migration management approach based on border security and military controls will be the priority choice

⁵⁴ Anthony Oliver-Smith, 'Climate Change and Population Displacement: Disasters and Diasporas in the Twenty-first Century', in Susan A Crate and Mark Nuttall (eds), *Anthropology and Climate Change: From Encounters to Actions*, (Left Coast Press 2009), 116 et al.; Alice Sironi and Lorenzo Guadagno, 'The Protection of Migrants in Disasters', in Flavia Zorzi Giustiniani, Emanuele Sommaro, Federico Casolari, Giulio Bartolini (eds), *Routledge Handbook of Human Rights and Disasters*, (Routledge 2018), 309; Kalin, 'Disaster Displaced Persons' (n 17) 348; Prieur, 'Quel statut' (n 6); Lavieille, Bétaille, Marguenaud, 'Présentation du Projet' (n 43); Fernanda De Salles Cavedon Capdeville, 'Les droits de l'homme concernés par les catastrophes', in *Projet de CADHOM, Les Catastrophes et les droits de l'homme*, Tome 1, (ANR 2013), 30-109; Lavieille and De Salles Cavedon Capdeville, (n 52) 459-473

vironmental disasters.⁵⁵ At this point, the right of everyone at risk of displacement to live in an ecologically balanced, healthy, clean and safe environment must first be guaranteed. In other words, the importance of the right to the environment emerges in both its material and procedural dimensions.⁵⁶ As a matter of fact, in a regime that is envisaged to be established with a right and need-based approach, it is imperative that the right to the environment be guaranteed with the right to be informed,⁵⁷ to participate in the decision-making process, and to apply effectively to the judicial and administrative authorities against these processes. Thus, an international regime that will be created on the axis of disasters and the forced migrations they trigger will also enable environmental rights to be secured with a binding text at the global level.

In the axis of the reaction culture, the regime should envisage rights-based interventions against arbitrary refusals, especially against humanitarian aid offers encountered in practice. The current international legal order has given priority to the sovereignty of the political will in the country of origin, where the disaster and migration took place, against the humanitarian aid proposals that aim to meet vital basic needs such as clean water, healthy, nutritious and culturally acceptable food, shelter, hygiene materials and medicine during the crisis. Regarding humanitarian aid, the international legal order does not have a mechanism, a regulation of rights, a regime of responsibility that prioritizes the effective protection of victims. As a matter of fact, the UN International Law

⁵⁵ Michel Prieur, *Principes éthiques pour la réduction des risques de catastrophe et la résilience des personnes*, Council of Europe, EUR-OPA

⁵⁶ Michel Prieur, 'Le Conseil de l'Europe, les Catastrophes et les Droits de l'Homme', (October 2010), *VertigO - la Revue Électronique en Sciences de l'Environnement*,; McCue, (n 46) 179; İbrahim Kaboğlu and Nihan Yancı Özalp, *Çevre Hakkı*, (Tekin Yayınları 2021), 138 et al.; Yılmaz Turgut, (n 5) 60; Ahmet Güneş, (n 5) 13; Selim Kılıç, 'Uluslararası Çevre Hukukunun Gelişimi Üzerine Bir İnceleme', (2001) 2(2), *Cumhuriyet Üniversitesi İktisadi ve İdari Bilimler Dergisi*, 139; Mayer and Cournil, 'Towards Group-Specific Protection?' (n 23) 175, 185; Maria Stavropoulou, 'The Right Not to be Displaced', (1994) 9(3), *American University Journal of International Law and Policy*, 692, 707, 742

⁵⁷ In the event of a disaster that gives rise to survival anxiety, the public's access to clear and complete information is seen as a fundamental human right. See ECHR, Grand Chamber, *Öneryıldız/Turkey*, Application no. 48939/99, 30 November 2004, par. 92

Commission has also mentioned this legal protection gap.⁵⁸ In this context, the right to benefit from humanitarian aid provided in accordance with the principles of humanity, impartiality and objectivity⁵⁹ should be envisaged for the displaced, as an individual right,⁶⁰ in the context of the responsibility to protect the individual that the sovereign authority imposes on the states.

Another issue that will come to the fore within the scope of forced migration is the protection of the rights and freedoms of individuals to determine their own destiny in their living spaces. In this context, the new regime should ensure that those at risk of disaster benefit from a strong protection against arbitrary evictions⁶¹ due to the economic wheel turning over the transformation of their living spaces. At this point, forced evacuations, which should be realized with a transparent and participatory public management approach, should only be considered as a last resort in terms of the lives and safety of people at risk. Here, it should be accepted that people at risk have the right to leave their habitat, as well

⁵⁸ ILC, Draft Articles 10, 11, 12 and 14 on the Protection of People in Disaster; ILC, Report of the International Law Commission, Doc. A/71/10, 2016, p. 56

⁵⁹ These principles, which are the intersection point of the fields of international humanitarian law and human rights law, are the principles determined by the UN Humanitarian Aid Office (OCHA for short) regarding the benefit of humanitarian aid. The principle of humanity is to ensure the survival of the needy in accordance with the requirements of human dignity; the principle of impartiality is to help everyone in need, regardless of race, language, religion, gender, class or political opinion; The principle of impartiality requires humanitarian workers to continue their work without being a party to any conflict/conflict. See OCHA, Humanitarian Principles' < https://ochanet.unocha.org/p/Documents/OOMhumanitarianprinciples_eng_June12.pdf > Retrieved on 09.08.2021

⁶⁰ CESCR General Comment No. 3, 1990, The nature of States parties obligations, par. 1 ve 8; IASC, Operational Guidelines on the Protection of Persons in Situations of Natural Disasters, B.1.1 ve B.1.2. Marlies Hesselman, 'A right to international (humanitarian) assistance in times of disaster: fresh perspectives from international human rights law', in Flavia Zorzi Giustiniani, Emanuele Sommaro, Federico Casolari, Giulio Bartolini (eds), Routledge Handbook of Human Rights and Disasters, (Routledge 2018), 65-83

⁶¹ The term 'forced evictions' is defined by CESCR 'as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.' CESCR, General Comment No. 7: The right to adequate housing (Art.11.1), 1997, par. 3

as the right not to leave their residence by taking all risks.⁶² On the axis of freedom of settlement and travel, the possibility of returning to the lands of origin that has become habitable for those who leave their living space safely should be given to those who have been displaced due to environmental reasons. Here, it is important that the right of return is voluntary and that the normalization process takes place with free will. In order for people to return voluntarily to their traditional lands or to prefer permanent settlement in the place of migration, it is essential that they be informed about the risks in their habitat and the information, predictions and assessments regarding living conditions.

The new regime should be structured together with institutional structures that will ensure the effective implementation of the regulations inherent in the rights and needs-based holistic process management covering before, during and after the environmental forced migration, financial mechanisms that will meet the resource needs, and supervisory bodies that will secure the status of the displaced due to environmental reasons.⁶³ In this context, the World Environmental Forced Migration Agency as an independent organization can be envisaged as responsible for the implementation and support of the regime. The Agency's Secretariat function can be fulfilled by the International Organization for Migration,⁶⁴ which has been working on the phenomenon of

⁶² Michel Prieur, 'Projet de la Convention relative au statut international des déplacés environnementaux', in Jean-Marc Lavieille, Julien Bétaille, Michel Prieur (eds), *Les catastrophes écologiques et le droit: échecs du droit, appels au droit*, (Bruylant 2012), 550-551

⁶³ The proposal 'Draft Convention On The International Status Of Environmentally Displaced Persons', which was prepared under the leadership of French academics, proposes three basic institutional structure: 'World Agency for Environmentally Displaced Persons' (article 21), 'High Authority' (article 22) and 'Global Fund for Environmentally Displaced Persons' (article 23). This proposal is a rights and need-based status arrangement that only addresses those who leave their habitats rather than forced migration

Since we propose the adoption of an international convention that will deal with the disaster and the forced migration it triggers with a process management-oriented approach, institutional characterizations focus on the phenomenon of environmental forced migration rather than environmentally displaced persons

⁶⁴ Draft Convention On The International Status Of Environmentally Displaced Persons, art. 21

migration triggered by disasters for a long time,⁶⁵ striving to disseminate examples of good practice, and which has the status of 'relevant organization', which is currently a member of 172 states and has been collaborating with the UN system since 2016. In addition to the institutional structure, a Global Environmental Forced Migration Fund should be established to financially guarantee the functioning of the regime. This fund, which will be supported by compulsory contributions as well as voluntary contributions, should be based on the polluter pays principle. In this context, the fund will be fed with environmental taxes that will be collected not only from the states but also from private actors, who are today's primary polluters, in proportion to their role in the ecological crisis. In terms of contributing states, not only the polluting activities of developed states, but also the processes and activities of developing states that trigger ecological crises by 'dumping the environment'⁶⁶ should be evaluated within the scope of tax. Finally, it would be appropriate to envisage a High Authority to strengthen the binding nature of the regime and oversee the implementation and interpretation of the Convention. The existence of such a structure, whose decisions will be binding and final for the state parties, will allow the fear of being deceived,⁶⁷ which is among the biggest political reservations of states in the formation of international environmental regimes, to be overcome and the establishment of an international regime with broad participation.

Conclusion

⁶⁵ For detailed information, see <<https://environmentalmigration.iom.int/fr/iom-publications>> Retrieved on 05.08.2021

⁶⁶ Aykut Çoban, 'Çok Uluslu Şirketler – Ekolojik Zarar İlişkisinin Ekonomi-Politiği', in Mehmet C. Marin ve Uğur Yıldırım (eds), *Çevre Sorunlarına Çağdaş Yaklaşımlar – Ekolojik, Ekonomik, Politik ve Yönetimsel Perspektifler*, (Beta 2004), 273 et al.; McCue, (n 46) 184-185

⁶⁷ There is a concern that there may be parties that can benefit by avoiding the cost or burden of cooperation envisaged in international environmental regimes. In the face of this phenomenon, which is also called the 'problem of free will', states remain hesitant to undertake binding obligations and choose not to be a party to the agreements. Gökhan Orhan, Yasemin Kaya, Semra Cerit Mazlum, 'Uluslararası Çevre Rejimleri: Oluşturulmaları, İşleyişleri ve Özellikleri', in Gökhan Orhan, Semra Cerit Mazlum, Yasemin Kaya (eds), *Uluslararası Çevre Rejimleri*, (Dora 2017), 6

As an issue at the crossroads of human rights law and environmental law, it seems that those displaced by environmental reasons cannot benefit from adequate protection in the current international legal order. In the Anthropocene era, in which we are living and where human-induced risks threaten sustainability, it is aimed to establish a new international regime, which is not limited to the management of the phenomenon of forced migration, which is a vital risk factor of disasters, which considers embodying the prevention culture among its main objectives, and in this context, combines environmental law and human rights law. The need is increasing day by day. For this purpose, the proposal of 'International Convention on Environmental Forced Migration in the Context of Disasters' has been put forward.⁶⁸

As a requirement of the prevention culture it has adopted, the aforementioned proposal imposes the obligation on states to internalize a sustainability approach that prioritizes the environment in the prevention of environmental forced migration and protection against future migration risks in political, social, cultural and economic life. On the other hand, it also includes right and need-based interventions against the evacuation practices of national authorities and the discretionary powers it has in the migration process management for humanitarian aid. The institutional structure envisaged by the contract proposal also envisages legal and diplomatic supervision of the actions, transactions and decisions of the parties in the environmental forced migration process management and the decisions to be made regarding the status of the displaced due to environmental reasons. Therefore, the proposal in question will result in stretching in favor of the protection of human rights in the principles of respect for sovereignty and non-interference in internal affairs on which international law is based. For this reason, it is possible to raise doubts about the realism and applicability of the Convention proposal and to criticize this proposal.

It is now being discussed loudly in societies that the legal norms and institutional structures developed on the neoliberal ground are the triggers and supporters of human-induced ecological crises that threaten

⁶⁸ 'Draft Convention On The International Status Of Environmentally Displaced Persons', expressed as a 'turn-key' text that has been worked on since 2008, has been an important guide for the proposal of the 'International Convention on Environmental Forced Migration in the Context of Disasters'

vital sustainability. Solutions aimed at transforming the economic and social order in line with environmental requirements against the ecological threats to existence are finding more and more support every day. In addition, the global nature of the ecological crisis shows us the fact that no society, rich or poor, is free from the effects and consequences of this vital problem. Therefore, internalizing a legal solution that requires a 'radical' transformation in the current international legal order is not as impossible as one might think. Moreover, humanity is rapidly moving towards the necessity of accepting such a radical solution in the face of disaster projections, especially the climate crisis, where we have reached the point of no return.

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