

SCIENTIFIC REVIEW

Climate Refugees in a Legal Vacuum: Bridging the Protection Gap in the International Refugee Convention¹

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Abstract

This systematic literature review examined academic literature addressing the legal protection gap for migrants displaced across borders due to climate change. The literature review through PRISMA guidelines explored three research questions by analyzing 120 sources (2005-2024): the arguments for and against the extension of the 1951 Refugee Convention, proposed alternative frameworks, and the main barriers to the implementation. The analysis corroborated the main inadequacy of the Convention as its principal definition – requiring persecution connected to a specific civil or political status – was incompatible with the impersonal, multi-causal nature of climate displacement. The literature produced a variety of proposals, with the guidance of a multi-layered governance approach as the preferred way to go over a single instrument. Among these were the evolutionary interpretation of human rights law for complementary protection, the strategic use of soft-law tools like the Global Compacts, and the prioritization of regional and bilateral pathways. Moreover, the review pointed out that the main barriers to the needed political and normative changes are the attribution of responsibility, the securitization of migrants, and state sovereignty. It argued that overcoming the protection gap demands a realistic, polycentric approach that not only works within the law but also engages regional innovation and progressively builds the political will necessary for a future framework that is more just and comprehensive than the present one.

Key Words:

Climate refugees, protection gap, 1951 Refugee Convention, non-refoulement, complementary protection

1 Introduction

1.1 Background

The rapid change in our climate has become the main reason for people moving from one place to another, making the situation hard and complicated, as well as taking up a large section of the Earth's population needing help. The scientific community agrees, as represented by the Intergovernmental Panel on Climate Change (IPCC), that through climate change, the number and strength of disasters caused by the sudden onset like

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floods, cyclones, and wildfires, are increasing while slow deaths caused by climate change are progressing rapidly (IPCC, 2022). The situation is forcing the communities to leave and move, especially in the vulnerable areas to climate change. Although internal displacements are more common, migration across borders is being seen as a measure to adapt by some populations. The estimates fluctuate considerably, but they all point towards a staggering number; the World Bank's Groundswell reports predict that by 2050, in the absence of strong and immediate action, 216 million people might be forced to internal migration due to climate change, with quite a large but difficult to measure part probably walking across borders (Clement et al., 2021). The International Organization for Migration (IOM) argues that nature is one of the main reasons for human migration, presenting the intricate relationship of climate and social, economic, and political factors as drivers (IOM, 2023). The empirical evidence from recent field studies adds more strength to this concern: According to UNHCR (2024),

"climate-affected persons are now located at the crossroads of environmental risks, conflicts, and displacement, thereby suffering from multiple forms of protection vulnerabilities which existing legal frameworks lack the capacity to redress." (UNHCR, 2024)

The unique nature of environmental-induced displacements poses a problem for the current protection systems. The ability of such occurrences to be addressed under the current humanitarian systems does not exist. Contrary to displacements as a result of conflicts and persecutions, the environmentally-induced displacements tend to have a non-linear and lengthy nature. Displacements resulting from sudden natural calamities occur and are easily noticeable, but once the affected lands become unusable due to their submergence and degradation, there is no hope of recovering from the situation. However, displacements caused by slow onset processes are marked by a secretive crisis where livelihoods slowly diminish year after year, hence pushing the people to migrate or even plan their migration (Mayer, 2022). Populations that are most impacted tend to originate from those regions that have contributed the least to greenhouse gas emissions, illustrating clearly the need for climate justice and the sharing of burdens equally. This scenario has been described by the Platform on Disaster Displacement (PDD) as an area requiring more than just humanitarian assistance. It involves planning of relocation, mobility arrangements, and rights of integrity and cultural preservation even after loss of their homeland (PDD, 2023).

This projected protection gap would be exacerbated further owing to the differences in vulnerability and adaptability capacities across regions. It will involve the small island states of the Pacific region, the delta states in South Asia, and the arid regions in Sub-Saharan Africa that exist in vulnerable circumstances where they may ultimately lose territory and habitable lands. The issue of rising sea levels, for example, becomes the test case for whether states like Kiribati, Tuvalu, and the Maldives can sustain their existence in terms of the legal implications of becoming 'stateless' due to the physical disappearance of the lands they inhabit (Burkett, 2023). In such a scenario, the need for cross-border migration will become a means not just for seeking economic gain but a survival tactic for the whole community. At the same time, the responses of the international community, as exemplified through analysis of the Global Compact on Refugees and the Global Compact for Migration, have been haphazard and piecemeal attempts relying on a soft law approach with little legal predictability or guarantees of human rights provisions (McAdam & Burson, 2023).

1.2 The Legal Problem

The unfolding situation has the possibility of creating a very serious and threatening protection gap, due to its clash with the international law that is considered static and outdated. The 1951 Refugee Convention and its 1967 Protocol, which lay the foundation of refugee law, narrowly describe a refugee as someone who is forced to leave his/her home country due to persecution based on race, religion, nationality, political opinion, or membership in a certain social group. The climate displacement, driven mainly through a natural disaster that is indiscriminate in nature, conflicts greatly with this definition; the affected persons can hardly claim to be persecuted for one of the reasons recognized by the Convention (Foster & McAdam, 2022). Hence, even if they are in life-threatening conditions or their homes are lost forever, the people displaced by climate impacts, who cross borders by doing so, have a very slim chance of being recognized globally as refugees and being granted rights of non-return (non-refoulement), asylum, and durable solutions (UNHCR, 2023). The advocates are divided over the issue; some of them have suggested extending the “particular social group” category or the application of the non-refoulement principle through the avenue of human rights law, as tentatively hinted at in the UN Human Rights Committee's 2020 *Ioane Teitiota v. New Zealand* ruling – these options, however, are still rare, legally fragile, and insufficient for tackling the problem of large-scale displacement (Pires, 2024). Such a legal gap means that millions lack proper protection since no country guarantees the right of entry, residence or asylum, leading to a higher probability of creating a legally invisible underclass of “climate refugees.”.

1.3 Research Aim and Questions

This review methodically charts the academic reaction to this gap, investigating:

- What are the main legal and normative reasons for and against the expansion of the Refugee Convention?
- What other protection frameworks and instruments are identified in literature?
- What are the main political and practical obstacles to enforcement?

2 Methodology

The methodology employed for the systematic literature review adhered to the PRISMA guidelines, which provided both rigorous standards and clarity throughout the process. First, the process of conducting the literature review included the identification of articles through a wide search on four academic databases: Scopus, HeinOnline, JSTOR, and Google Scholar, as well as searching through the bibliographies of some of the most relevant articles manually. The search process included a set of keywords and Boolean expressions, which included: “climate refugee”, “environmental migrant”, “climate-induced displacement”, “protection gap”, “1951 Refugee Convention”, “non-refoulement”, “complementary protection”, and “loss and damage”. The period of publication had a restriction imposed on it to be only until 2005-2024, being selected so as to reflect the rapid discourse on climate change in the wake of the adoption of the Kyoto Protocol, as well as to cover increasing interest in climate displacement. First of all, over 800 records were identified during the initial literature search; the sources were then screened based on titles and abstracts in accordance with inclusion criteria defined prior to conducting this systematic review, namely that the record addresses primarily the legal regimes of international protection for cross-border movements primarily due to climate

change and environmental degradation. As a result, the screening helped to select 175 sources for full-text analysis, which were then assessed based on their relevance to and analytical depth in relation to the issue at hand. After such an assessment was made, 120 sources have been identified for inclusion in this corpus and further analysis, consisting of academic papers from peer-reviewed journals, landmark monographs, and policy outputs from key international organizations like the UNHCR and IOM, as well as from state-led efforts including the Platform on Disaster Displacement. The data from these sources were taken out and combined through thematic analysis, which was employed to identify, analyze, and report the central patterns (themes) that are the basis of the scholarly debate, thus directly addressing the research questions about legal critiques, proposed solutions, and barriers to implementation.

3 The Inadequacy of the 1951 Convention: A Synthesis of Critiques

The 1951 Refugee Convention, a significant event in the field of post-war human rights protection, was mainly meant to tackle the state-sponsored murder and oppression of people. Its basic structure is completely unfit for the challenge posed by global warming, which is a human-created disaster. A thorough survey of present-day legal academia has shown that all scholars agree that the Convention is inadequate in terms of establishing a protection mechanism for the victims of environmental changes who migrate to other countries. The main argument is based on the Convention's basic qualification of a refugee, which demands that the claimants have a specific connection to their persecution, be part of a particular social group, and have been compelled to flee across the border, for which the Convention grounds constitute the main reason for their displacement (Foster & McAdam, 2022), which are all legal requirements that almost no one who is affected by climate change can fulfill. This part combines the critiques and shows how the Convention, with its inflexible terms, has become outdated, as it is no longer applicable to a catastrophe that is characterized by having a widespread impact, complicated causation, and the possibility of complete loss of land.

Before proceeding, a brief terminological clarification is necessary, as the debate is complicated by inconsistent use of key terms. The term "climate refugee" is normatively and politically charged and lacks any legal status in the realm of international refugee law. The use of such language in scholarly discourse might undermine efforts to address the legal lacuna that will be discussed in this paper. The International Organization for Migration uses the term "environmental migrant" to describe voluntary and forced migration caused by environmental changes. At the same time, UNHCR does not refer to such people as "refugees" because it tries to avoid doctrine confusion and thus chooses a more neutral term, which implies "persons displaced in the context of disasters and climate change" (UNHCR, 2023). The phrase "climate-displaced person" has become quite popular in legal literature due to its neutrality regarding Convention status and implication of forced displacement. The use of the term "climate refugee" is convenient from the point of view of brevity.

3.1 Lack of Nexus to Protection

The first characteristic of refugees is a well-founded fear of persecution, and this term by itself implies the will and intentionality of persecutors. Persecution involves deliberate and unjust behavior committed by a government or a non-state actor who needs to protect itself from. Conversely, climate change is an impersonal effect at a global scale, resulting

from emissions anywhere around the globe, and it lacks the specific intention to harm any specific individual or group of people. According to the latest research results, damage caused by environmental changes cannot be considered as persecution because it does not fulfill the requirements set by the Convention. Nevertheless, some theories suggest that a government's discriminatory intention not to undertake action aimed at preventing or adapting to the effects of climate change might be regarded as persecution of the country's most vulnerable population; still, this interpretation looks like a weak and impractical solution. The court and tribunals are unwilling to interpret persecution in such a broad way, being aware of numerous difficulties involved in this interpretation (Foster & McAdam, 2022). The current review offers an interesting development in the argument based on a theory of persecution by omission. If a State, as a result of an intentional act of discriminatory commission, omits to provide a disadvantaged ethnic, religious, or political group with climate change adaptation funding, disaster mitigation funding, and/or an early warning system, while extending these benefits to another group, environmental destruction may well be a form of discrimination. For example, where a State provides flood protection and evacuation funding to one ethnic group residing in a coastal area, while failing to do so for another oppressed ethnic community in a similarly situated location, the link to a Convention ground may be restored via omission. However, in this case, the displacements caused by the flood cannot be seen merely as a natural calamity, but as the inevitable and discriminatory result of the omission of the State. The connection between the displacement and Convention grounds - in this case, race or ethnicity - can be achieved by the deliberate failure to protect. Though evidentiary problems for the claimant in this situation will be quite severe, and given that courts have not so far followed this path (Foster & McAdam, 2022), it represents a valuable solution from both legal and practical perspectives.

Determining the identity of the persecutor is much more challenging in the case of climate change. In conventional refugee law, the persecutor is the party from whom the refugee claimant is fleeing. In the case of climate change, the main culprits are overall and historical emissions, making it both problematic and unjust for many vulnerable states to single out and accuse one state actor, particularly the country of origin. Moreover, claimants are not able to effectively assert that they are fleeing persecution by their own government on the grounds of climate impacts when that government may itself be a victim of global inaction, is very often in the process of seeking international support for adaptation, and sometimes even actively so. This discontinuity cuts off the vital legal connection between the claimant's fear and the liability of their country of origin, which is the link that McAdam (2022) calls essential to the logic of the Convention.

Furthermore, the fact that the impacts of climate change are indiscriminate makes it impossible to have the discriminatory intent that is necessary for persecution. Even though climate changes are not the same in all locations, their physical impacts are not determined by race, religion, or politics at any given place. One place may be ravaged by a cyclone, while others may be suffering from desertification. The population displacement that ensues will, no doubt, expose the aforementioned social weaknesses, but in the legal sense of causation, the weaknesses will not be the cause of the displacement. The harm done is at the core an issue of distribution and socio-economics, according to one's location and dependence on a particular livelihood, not one's identity or convictions. Such a scenario is accounted for in the Convention's protective purpose, which is to protect against the harm that is not only targeted at the specific group but also based on one's

identity and not from the misfortunes that are generalized, whether environmental or economic (Pires, 2024).

Thus, the fitting of climate displacement into the “persecution” framework has been mostly viewed as a doctrinal dead-end (Scott, 2023). In the 2020 UN Human Rights Committee decision in *Ioane Teitiota v. New Zealand* (Human Rights Committee, Communication No. 2728/2016, CCPR/C/127/D/2728/2016), though innovative for accepting that in very exceptional cases the climate impacts would lead to non-refoulement obligations under human rights law, it positively stated not to deal with the definition of refugee. This silence reaffirms the prevailing view within the legal community that the road to protection of climate-displaced persons has to go through the route of complementary protection, new agreements, or the expansion of human rights law - rather than through a forced and unsustainable reinterpretation of “persecution” (Scott, 2023).

3.2 The “Particular Social Group” (PSG) Dilemma

Substantial work has gone into the “particular social group” (PSG) ground (Singh, S. K., 2023; Wewerinke-Singh & Loper, 2021), which is the most flexible of the five Convention grounds, faced with the “persecution” impasse. The argument presents that individuals displaced by climate change could be a PSG based on an immutable or fundamental characteristic of their shared identity, like their geographical origin in a climate-vulnerable region. However, judicial pronouncements on the PSG requirement from the most important asylum-granting states, such as Canada (*Attorney General v. Ward* [1993] 2 S.C.R. 689; *Applicant A v. Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225 (Australia); and *Islam and R v. Immigration Appeal Tribunal, ex parte Shah* [1999] UKHL 20 (UK)), have set a very high threshold for satisfying the PSG, requiring both that the group has an immutable characteristic or a fundamental belief that defines its identity and that it is perceived as a distinct group by the surrounding society (social distinction). This test applied to climate-affected populations presents formidable, and likely insurmountable, challenges (S. K. Singh, 2023).

The first major hurdle is defining the group with sufficient “particularity.” Is the group “all persons living in low-lying coastal zones,” “subsistence farmers in the Sahel,” or “citizens of small island developing states”? For each definition, the issue arises that they can either be too broad and vague in nature to qualify as a “particular” social group, or they are just too narrow in scope. Courts have time and again rejected PSG claims involving common hardship or residence in disaster-prone areas as circumstances and not traits of social identity. The commonality of being vulnerable to geophysical processes cannot easily qualify for the social identity that the framers of the Convention had in mind (Wewerinke-Singh & Loper, 2021).

The second one, perhaps even the more crucial, is the creation of the required “nexus,” namely, that the person is persecuted because he or she belongs to the group. Again, it all comes down to the issue of agency and intent. Although purely hypothetically, if the court were to accept that the inhabitants of a sinking Pacific atoll belong to a PSG, the applicant must be able to demonstrate that he or she is being persecuted on account of such affiliation. The causative agent is rising sea levels, which are not an entity endowed with intent and targeting the applicants as members of the group; rather, they persecute because the applicants happen to be at a certain geographical point in space. This is a

basic flaw in the reasoning regarding PSGs based on Convention standards (Foster, 2020).

In the end, the PSG category has come to overlap with the likes of women victims of gender-based violence and families being targeted by gangs, and has evolved like that, but its extension to include the victims of environmental developments, is still perceived by many local and international courts as too much of a leap (McAdam & Burson, 2023; Wewerinke-Singh & Loper, 2021). That has been the prevailing perspective: allowing for such expansion would substantially change the Convention's aim, shifting it from an instrument for the protection of political and social rights to one combatting humanitarian and environmental crises. To be clear, this should not be interpreted as implying that the claims of climate-displaced persons to international protection are not strong enough, but rather, that adapting this claim to the PSG format is a legally invalid strategy that risks misapplying the Convention and producing inconsistent, unpredictable outcomes (McAdam & Burson, 2023).

3.3 Cross Border Imperative and Internal Displacement

This individual's crossing the border requirement is actually a core of the 1951 Convention's jurisdiction. This situation allows a protection gap for climate-displaced persons, as it is generally acknowledged by data that most of the climate-related movements are, and will be, internal. People are moving from areas affected by drought in the countryside to cities, from villages on the coast to higher grounds within the same country. The Convention does not recognize a legal framework for these internally displaced persons (IDPs), and as a result, it is the soft or sometimes stressed capacity of the national government that provides the IDPs with protection, which may be very weak or even paralyzed due to being the same disaster that is affecting the government (Zetter & Ruadel, 2023).

Cost, proximity, cultural bonds, and the wish to stay close to community and land are some of the reasons why the majority of climate displacement is internal. Besides, the Convention's logic – protection only exists if there's an international border crossing – has a negative impact and an ethical dilemma of sorts arising from its very nature. The Convention is unhelpful in terms of the solutions that seek to manage displacement in a proactive and dignified manner, either in situ or within national regions. The primary normative framework for IDPs, the 1998 Guiding Principles on Internal Displacement, while influential and comprehensive, remains non-binding soft law. Its implementation is uneven, and it is not monitored internationally or through complaints by individuals (Kälin & Entwisle Chapuisat, 2023). The devastating nature of this gap, where the whole land of a state becomes haunted by its people, is seen quite clearly during such parts of the scenario where no solution to the problem of internal displacement exists at all. In the case of the low-lying island states of Kiribati, Tuvalu, and the Maldives, if the rate at which the ice melts increases, it will make the entire exercise of relocation within the region totally unfeasible (Burkett, 2023). Thus, the planned and permanent movement of populations across international waters would be the only option. What the scenario signifies, albeit extreme and quite likely, is the Convention's failure being twofold: it fails to cover the ones displaced internally as the land disappears, and it does not provide any clear path to protection for those who will eventually be forced to become cross-border displaced. These people would be considered refugees only when all other options have

been exhausted, with no legal set-up to support orderly, human migration before (Burkett, 2023).

Hence, the cross-border stipulation of the Convention is both a substantive and a temporal mismatch. It not only disregards the primary area of concern of the climate displacement crisis, which is to say it does not only disregard the plight of the displaced who are still in their own countries, but also it does not foresee the extraordinary, existential situation where occupation within the nation is not possible anymore. It is a reactive tool for those who have already moved away, providing nothing for the critical steps of pre-emptive planning, managed retreat, and planned relocation, which are very important for adaptation to the climate. All these points to the fact that there is a need for supplementary frameworks that take care of all phases of displacement, especially its internal part, rather than depending on a treaty that only becomes active at the point of international crisis (Mayer, 2022).

3.4 Causality and Multiplicity of Drivers

Displacement caused by climate change is a rare case. It acts as a “threat multiplier,” making the compromised situations worse, mixing with complicated social, economic, and political factors. Environmental stress (e.g., prolonged drought) plus economic factors, like poverty, lack of land tenure, weak governance, political instability, or existing conflict, often lead to displacement in this form. The very existence of this “multi-causality” makes the refugee determination process legally and administratively based on the identification of a single dominant cause of fleeing – persecution for a Convention reason – a very serious challenge (Boas et al., 2021).

During a refugee status determination hearing, adjudicators must determine the persecutor’s motive. In a climate-related claim, they would rather have the nearly impossible task of disentangling the causal strands that are so closely intermingled. Was the farmer taken to migrate because the crop yield failed due to changing rainfall patterns (climate), because he had no access to irrigation or drought-resistant seeds (poverty/development), because the elites’ land grabbing left him without fallback options (governance/conflict), or was it all of these reasons and none of them? The legal framework of the Convention requires a clear, direct link between the claimant’s fear and the persecutory act, a link that gets totally obscured by the diffuse, synergistic causality of climate impacts (McAdam, 2022).

The complexity of causation here imposes a heavy burden of proof and procedures, which are quite hard to overcome. It demands of the sayer, challenges of evidence, and such that one would need very sophisticated, sometimes even beyond their financial means, scientific and socio-economic evidence to support the claim that the environment was the main reason for the person’s flight. It also makes it difficult to determine the states’ liability and to assess whether the internal protection alternatives are available. In case a displaced person has undergone or is going to undergo environmental changes that affect the entire country and not just his/her home region, decision-makers might wrongly assume that he/she can be resettled in the country of origin, merely considering the latter’s region-specific hardships (Foster & McAdam, 2022).

In the end, the multi-causal aspect of climate displacement confirms the Convention as being an instrument designed for a less complex, more binary world of political conflict. Its legal framework struggles to contain the messy, compounded emergencies that come

along with the collapse of the environment. If the same level of causality as that of climate displacement is attempted to be imposed on the decision-making process, it will lead to arbitrary decisions that will be biased in favor of one causal strand while neglecting the others, thus not doing justice to the people whose movement is due to intertwined and systemic failures. This leads to the need for a new framework, which would not only be tailored but also one that would accept multi-causality as an embodiment of the crisis the framework has to deal with and not as an obstacle to protection (Nash, 2023).

4 Bridging the Gap: A Taxonomy of Proposed Solutions

The 1951 Convention confronted its own systemic inadequacies, and legal scholars, policymakers, and advocates came up with a wide variety of solutions that were very different from each other to try to cover up the protection gap for the people displaced because of climate change. These solutions are not only of different types; they also differ widely in terms of their extent, going from such small and practical changes as mere adaptations of the existing legal frameworks to such bold and rich ideas as altogether new international instruments being born. There seems to be a clear tension between the desire to do things instantly, to walk on the ground, to rely on the existing instruments, and the realization that the magnitude and the uniqueness of the problem may finally justify a specially designed binding regime. This section of the paper examines the different suggestions put forward by experts, analyzing the legality of the proposed solution, its political appeal, and its feasibility in terms of providing the required protection. The debate has moved from the existence or non-existence of the gap to an analysis of how best to close it.

4.1 Evolutionary Interpretation of Existing Law

The most immediate proposals are geared towards changing the interpretation of the current international law, thus avoiding the long and uncertain process of creating treaties. The whole thing revolves around two main ideas: one of them is the stretching of the Refugee Convention itself, while the other is the application of human rights law through the principle of complementary protection. Redefining the criteria for refugees – like changing the meaning of “persecution” or “particular social group” to include environmental deprivation – has been more or less given up in the main legal discussions as not being legally valid. As Foster (2022) argues, such a change in interpretation would stretch the text and the original purpose of the Convention well beyond its limits, thus creating legal uncertainty, and at the same time, weakening its function for the traditional refugee populations. The courts have always been against this ruling, supporting the idea that the Convention is not a proper framework for dealing with harms brought about by non-discriminatory, impersonal environmental processes rather than human actions (McAdam & Burson, 2023).

The development of complementary protection under international and regional human rights law is an international and regional human rights law. The approach separates protection from the refugee definition, and instead, it is based on the absolute prohibition of refoulement to a real risk of torture or cruel, inhuman, or degrading treatment or punishment, or to arbitrary deprivation of life. The landmark 2020 UN Human Rights Committee (HRC) decision in *Ioane Teitiota v. New Zealand* gave critical momentum to the issue. Although the specific claim was rejected, the HRC asserted that

“without robust national and international efforts, the impact of climate change [...] might expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thus triggering the non-refoulement obligations of sending states” (UN HRC, 2020).

This sets up an important precedent that environmental destruction, if bad enough, can trigger non-derogable human rights and the consequent prohibition of return.

The involvement of regional human rights courts in the Teitiota reasoning process has commenced. In April 2024, the European Court of Human Rights delivered groundbreaking Grand Chamber decisions in two climate cases. First, in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (App. No. 53600/20), the Court found a violation of Article 8 of the European Convention on Human Rights (ECHR) by deciding that Switzerland had not done enough to take action against climate change and thus ensure protection of the right to private and family life for applicants – this being the first decision by the ECtHR finding violation of the Convention for failure to act in relation to climate. Second, in *Duarte Agostinho and Others v. Portugal and 32 Other States* (App. No. 39371/20), the Grand Chamber found the case inadmissible due to failure to exhaust domestic remedies. These rulings together establish that states bear positive obligations under the ECHR to adopt adequate frameworks for climate mitigation, while also illustrating the procedural obstacles that climate claimants continue to face. This law development is one of the reasons that the argument that returning to a spot made unfit for human life because of climate change could amount to a breach of the right to life or the prohibition of inhuman treatment under the ECHR and the International Covenant on Civil and Political Rights (ICCPR) is getting stronger (Mayer, 2022). Henceforth, complementary protection provides a rights-based, individualized safety net for the most extreme cases, which is a foundation of human rights.

Nonetheless, this method has very severe drawbacks. It still is a reactive and trial-like process which implicates individuals to go through complicated legal procedures very often from the most vulnerable position. It has been set up in such a way that only a very small number of cases expressing the “severity” will get a response, so this will likely include only the most immediate life-threatening situations due to acute disaster or extremely advanced habitat destruction that cannot be reversed. On the contrary, individuals who move due to degradation gradually or in anticipation of mobility will not have such a claim. Moreover, such a law guarantees only a negative right, that is, a right not to be returned and not a right to entry or stay within the territory, or access to permanent residence. According to Scott (2023), even though complementary protection has become a significant and evolving means for states, it remains a restrictive instrument and cannot be exclusively used to ensure systematic prevention of mobility governance from climate change. The most important but unexplored feature of the ruling is the “imminence requirement”: The Human Rights Committee made the application of the principle of non-refoulement dependent on the existence of an immediate threat to life. There lies a fundamental contradiction between this decision and climate displacement. It can be argued that protection comes into play only when environmental degradation takes a destructive character that becomes irreversible. In other words, when there is no way to help people who anticipate migration to avoid danger.

This creates a perverse incentive system where the law favors procrastination over preparation, since only individuals whose property has already been engulfed by rising sea levels will likely benefit from the non-refoulement provision, whereas individuals who opt

to plan their exit while there is still some capacity to adapt would not. The need to confront the inconsistency between the nature of climate change as a slow process and the immediacy of the threat standard borrowed from civil and political rights should inform future approaches to litigation and treaty design. Additionally, besides the landmark decision in Teitiota's case, there is also another emerging trend of case law from domestic tribunals that is more favorable to claimants seeking asylum on climate grounds. In New Zealand, Italy, and France, similar decisions have been made by the courts: in AD (Tuvalu) [2014] NZIPT 501370-371, the Immigration and Protection Tribunal of New Zealand allowed humanitarian leave to remain for a Tuvaluan family due to the climate challenges in Tuvalu; in *I.L. v. Italian Ministry of the Interior* (Ordinance No. 5022/2021), the Italian Court of Cassation instructed the trial court judges to take into account the impact of environmental and climate change while considering humanitarian protection; and the CAA de Bordeaux, No. 20BX02193, 18 December 2020 decided to prevent the deportation of an asylum-seeker from Bangladesh due to air pollution. This bottom-up legal evolution may exert more immediate influence on state practice than any treaty-level reform in the near term and offers a complementary avenue for the creation of climate protection norms which, judging by the results of this analysis, have yet to be systematically analyzed in the literature.

4.2 New International Legal Instruments

The limitations of interpreting existing law have been a good reason to put forward the creation of new, dedicated international legal instruments by many scholars and advocates over a long period. These proposals are aimed at the establishment of a framework for climate displacement that is comprehensive, predictable, and one that is based on rights. The most talked-about models are either a new protocol to the 1951 Refugee Convention or a stand-alone convention. The protocol, as some claim, could be an advantage in that it would be linked to an existing, widely ratified regime, thus being able to borrow its institutional support and normative authority. It could state the term "climate refugees," and specify rights and obligations of the states, including those concerning planned relocation, funding, and sharing of responsibilities. Nevertheless, recent literature is highly doubtful about this approach, warning that if the Convention is opened to amendments, it will provoke a reaction with certain states trying to limit rather than broaden the scope of protections in a tense geopolitical climate (McAdam, 2022).

The choice of establishing an entirely new and independent international convention will not be free of serious complications either. Model conventions, such as the proposal by the NGO "Displacement Solutions," provide an insight into the range of items included in a comprehensive regime: definitions of climate-displaced persons, non-refoulement principles, and relocation measures, alongside robust cooperation and financing regimes (Biermann & Boas, 2023). Yet, the political hurdles are too high. As the contemporary global political environment shows, there is a trend of isolationism alongside increased preoccupation with border control. Establishing a binding instrument that involves serious obligations of admission and resettlement, which have to be ratified on a large scale, is highly unlikely in the near future. According to Zetter and Ruadel (2023), the reluctance to commit to binding agreements regarding resettlement of traditional refugees proves how implausible the idea of acceptance of broader and more exotic obligations in the context of climate-induced displacement is.

However, using the regional and bilateral level systematically as a way to solve the issue in the short run is the most promising approach. Specifically, regional organizations can create local frameworks that take into consideration the shared environment, mobility, and cultural ties. The African Union's free movement protocols, together with the Kampala Convention for the Protection of IDPs in Africa, provide a blueprint for the incorporation of environmental migration into regional law. The Pacific Islands Forum (2018) states that in the Pacific, the 2018 Boe Declaration on Regional Security recognizes climate change as "the single greatest threat to the livelihoods, security, and wellbeing of the peoples of the Pacific," thus clearing the ground for regional policy development. Bilateral visa and labor mobility schemes, such as Australia's Pacific Australia Labor Mobility scheme or New Zealand's Pacific Access Category Resident Visa, although limited and not framed as protection instruments, are being viewed more and more as practical adaptive mechanisms that could be scaled and adjusted to provide legal ways for people living in climate-vulnerable nations to move (Bedford & Bedford, 2020). The synthesis from the above review shows that these layered and multi-centered approaches – namely soft laws, regional cooperation, and practical bilateral cooperation – have the most potential of being the basis for a global approach in the future (World Bank, 2023).

5 Soft Law and Governance Approaches

The international response has increasingly been carried out through soft-law instruments and state-led governance platforms as there is no political will for new binding treaties. These methods put consensus-building, normative development, and practical cooperation among the legally enforceable obligations. The Global Compact on Refugees (GCR) and the Global Compact for Safe, Orderly and Regular Migration (GCM) of 2018 are the leading examples of this paradigm. They do not create new legal obligations; however, they still play a significant role because they bring climate and disaster displacement in the context of the global governance agenda, and it becomes more formalized. The GCR literally says that it plans to help the countries where refugees are "in large refugee situations... because of... natural calamities," and the GCM binds the countries that signed it to create "adaptation and resilience strategies" for people who have moved because of environmental changes (UN, 2018).

Their advantage is that they offer a detailed plan for sharing the burden, building up the skill and mobilization of financial and technical assistance, thus creating a feeling of shared responsibility without requiring certain protection outcomes. According to McAdam and Burson (2023), the importance of the Compacts lies in their ability to act as normative evolution catalysts, stimulating states to align national laws and policies with principles gradually shaping state practice from the bottom up. What distinguishes the Global Compacts from the regional and bilateral mechanisms analyzed in the preceding section is their universalist architecture: unlike the OAU Convention or the Cartagena Declaration, which operate within regional legal communities of shared circumstance, or bilateral labor schemes, which depend on the political will of two states, the Compacts establish a global normative platform on which all UN member states are formally engaged. This universality is simultaneously their greatest strength and their most significant weakness: the breadth of state participation is purchased at the cost of any enforceable obligation, rendering the Compacts aspirational frameworks rather than a protection guarantee. Their distinctive contribution, therefore, lies not in the rights they confer but in the political legitimacy and data-sharing infrastructure they create, which some experts believe can eventually help

develop the practice and opinio juris required for customary international law to develop in this domain, even if such an assumption is debatable and unverified at this stage (McAdam & Burson, 2023).

Notwithstanding, the model of soft law has its inherent limitations, which are very clear. The voluntary character of the Compacts means that implementation is purely a matter of choice, this giving rise to a diverse pattern of reactions that are solely dependent on the existing political atmosphere and domestic priorities. Among the many critiques, the most prominent one is that with no hard obligations, the Compacts risk becoming a means to justify non-action, such that states might verbally commit to protection yet in practice, keep the border policies restrictive (Scott, 2023). The GCR's "CRRF" (Comprehensive Refugee Response Framework) has its funding and support mechanisms that remain chronically under-resourced and ad-hoc when the climate contexts are considered. Therefore, the Global Compacts, although a shift in discourse recognizing climate mobility as an issue for international cooperation, are still more of a dialogue and technical exchange platform than direct mechanisms for granting individual rights or providing displaced persons with predictable protection (Mayer, 2022).

Alongside the Global Compacts, various state-led initiatives have come up, which are more specialized and aim to close the specific governance gap caused by cross-border disaster displacements. The Nansen Initiative (2012-2015) and its successor, the Platform on Disaster Displacement (PDD), are the perfect examples of a targeted, bottom-up method. They did not attempt to secure a treaty; instead, they brought together states from the impacted regions to work together on the development of a toolbox of effective practices. The main result produced was the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, which is a set of non-binding principles and policy options that cover the issues of admission, stay, and protection needs (PDD, 2023). The states can adopt and customize these measures to their national contexts voluntarily. Among those are the temporary protection regimes, humanitarian visas, and planned relocation guidelines. The approach has been useful in reducing the fears around the sovereignty issue. It has been successful in gaining the trust of the states and in generating knowledge that can be used effectively.

The PDD continues to play an important part in making soft-law principles operational. It contributes to the setting of regional policies, advocates for the incorporation of displacement factors in national disaster risk reduction plans, and pushes for the recognition of mobility provisions in climate adaptation assistance. Its activities have, for example, been a driving force in the debates on "loss and damage" under the UNFCCC, where it has been advocating for the establishment of funding streams that would include displacement (Zetter & Ruadel, 2023). However, the survival of protection depends on the uninterrupted dedication of the member states. The very criticism of these governance schemes, including the Nansen Initiative and the PDD, is that they arrange for temporary humanitarian gestures without declaring a right to protection. They do improve the management of displacement situations, but they do not effectively challenge the power of states to exclude. According to Biermann and Boas (2023), the soft law is not only a necessary but also an important interim step for the development of political will and the exploration of solutions, yet it must still be considered a transitional phase towards more powerful and rights-based legal frameworks that can provide durable solutions and a

predictable long-term status for those who are permanently displaced by a changing climate.

6 Regional and Bilateral Solutions: The Most Promising Near-Term Path

6.1. The African Prototype: Leveraging Expanded Regional Frameworks

The African regional legal architecture continues to be referred to as a global example of a very advanced and effective method for addressing the issue of displacement, giving binding instruments that are defined so broadly that they might include climate-driven movements. The basic 1969 OAU Refugee Convention is one such example that significantly increases the scope of the refugee definition that the 1951 Convention offered, including “external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality” as possible reasons for flight. The “public order” clause is one of the explicit reasons for the scholars’ argument that environmental disasters of great magnitude, such as those that lead to large areas being uninhabitable, destruction of vital infrastructure, and creating societal instability that spreads, could be such a severe disturbance (Abebe, 2023). This legal interpretation, if accepted by states and regional bodies, could establish a treaty-based protection status for cross-border climate displacees without the need to rewrite international law. Furthermore, the 2009 Kampala Convention (the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa) has very recently consolidated this model by becoming the very first and only binding regional treaty to clearly mention “natural or human made disasters, including climate change” as a reason for internal displacement and consequently obliging governments to prevent such displacements, safeguard and support those affected (Adeola, 2023).

Nonetheless, the practical use of these frameworks is still very inconsistent and not very developed. The legal provisions are there, but their application to climate cases is not a given. National implementation laws are usually slow to come, and the continent’s asylum systems are often burdened, under-funded, and mainly concentrate on conflict migration. There has still not been a chance to see how far the extended definition of the OAU Convention can be taken when it comes to climate-related asylum claims. and it is noted that the African Commission on Human and Peoples’ Rights has not yet issued any case law that would affirm this connection (Abebe, 2023). The Kampala Convention is another instance of the legal tools aimed at protecting people displaced by climate change and other disasters being very much underutilized. By this instrument, already, “ancient” norms and perspectives – that see displacement as an acute problem of transition, to be overcome by going back, rather than a problem that requires a lasting, right-based resettlement solution – are expressed most strongly in Africa. Thus, despite the Convention’s comprehensive and capable rights-based approach to all phases of displacement, it would be effective if there were strong action plans from the national and regional levels, which have not yet been established (Abebe, 2023).

The African model, although facing these difficulties, is still an important and necessary example for other areas and the future of global governance. It proves that a regional law, which is binding, can take a comprehensive and neutral approach to displacement and at the same time be very much in tune with the local situation, including the environmental factors. The existence of both cross-border (OAU) and internal (Kampala) protection frameworks together in one regional system is more integrated than the fragmented global

regime and therefore offers a better response (Adeola, 2023). Going forward, the key problem that the authors identify lies not in the creation of any additional laws, but in tapping into the potential that already exists through focused advocacy, training of skills for asylum officials, and strategic use of litigation resulting in case law (Adeola, 2023). In the African experience, regional approaches, despite certain limitations, offer a more pragmatic way towards protection compared to the promise of an international agreement, which seems distant at best.

6.2. Latin American Innovation: The Cartagena Declaration and “Public Order”

In Latin America, the 1984 Cartagena Declaration on Refugees is a similar influential soft-law instrument with a forward-looking and flexible definition. It has expanded the criteria through national laws of over a dozen states, which include people escaping “generalized violence, foreign aggression, internal conflicts, massive violation of human rights or *other circumstances that have severely disturbed public order*” (emphasis added). This last, open-ended clause is attracting more and more attention from scholars and practitioners as a possible legal basis for the protection of the environmentally displaced. The case being made is that severe and sudden-onset disasters – such as the disastrous Hurricane Mitch in 1998 or the repeated mega-droughts in the Central American Dry Corridor – can bring about exactly the kind of breakdown of society, loss of government’s control, and wars over resources that are recognized as a serious disturbance of public order (Fischel de Andrade, 2023). This opens up the possibility of a protection argument that is disaster-induced rather than a persecution redefinition.

A few states have already started to apply this approach via their national laws, and thereby, a very embryonic but still genuine practice has been born. Following the earthquake that struck Haiti in 2010, Brazil granted humanitarian visas to the Haitians through the use of the Cartagena principles. Argentina has designed an all-encompassing humanitarian visa policy for nationals of countries that suffer “natural or environmental disasters.” The most important development in this regard was made recently when the Mexican refugee law was amended in June 2023 to automatically provide for the admission of those displaced owing to “climate change or natural disaster” according to one of the Cartagena principles, thus creating one of the first-ever explicit national laws that facilitate the filing of climate asylum cases in the world (Bermúdez & Espinosa, 2024). This shows that there is currently a trend towards interpreting “public order” in the 21st-century environmental context with the help of a regionally-owned tool in order to plug the gap left by the 1951 Convention.

At any rate, the Cartagena model faces certain deficiencies typical of other regional protection schemes as well: its application is discretionary and not consistent between individual states, while being regarded as “soft law.” As far as the “public order” provision goes, it is generally applied when referring to those sudden disasters that have severe effects on the community in question. However, concerning the displacement from the land due to increasing levels of the ocean or desertification, one may say that such a criterion cannot be used at all.

Furthermore, the protection granted under this regime is only of a provisional nature and does not include sustainable solutions along with a robust human rights framework characteristic of fully-fledged refugee status. Therefore, while the Cartagena Declaration remains one of the most influential and flexible mechanisms for the protection of

refugees, which is becoming increasingly popular across regions, it serves as part of an array of strategies that includes resettlement schemes, regional mobility initiatives, and complementing human rights protections as well (Fischel de Andrade, 2023).

6.3 Bilateral Labor Mobility: Pragmatic Pathways with Structural Limits

From the level of regional multilateral agreements to the bilateral and national approach, a completely distinct class of pathways will now be considered. In contrast to regional agreements like the OAU Convention and Cartagena Declaration, which have an agreement-based approach, the bilateral labor mobility agreements use a one-on-one state-based approach on an economic and diplomatic basis. This change in scope is not only for analytical purposes but also for practical reasons, since the nonexistence of binding regional or global protection regimes means the individual states need to make up their own way out. The most pressing question in this section, then, becomes whether these bilateral agreements can actually be modified into protection tools or whether these bilateral agreements cannot serve this purpose, no matter what reformulation takes place.

Bilateral labor mobility schemes are under intense scrutiny – not only regionally but also legally – as pragmatic, existing mechanisms which can be adapted to serve as channels for climate-adaptive migration. Australia's Pacific Australia Labour Mobility (PALM) scheme and New Zealand's historical Recognised Seasonal Employer (RSE) scheme, as well as Pacific Access Category (PAC), are analyzed not as refugee protection instruments but as forms of "adaptive migration" that provide lawful, predictable pathways for citizens of climate-vulnerable Pacific Island states. These schemes are regarded as transferring adaptive capacity through remittances, skills development, and the diversification of household income sources, and thus, they are strengthening community resilience in the origin countries (Bedford & Bedford, 2020; World Bank, 2023). Where formal protection channels are blocked, they represent a politically palatable scenario for destination states framed in terms of economic development and regional cooperation rather than humanitarian obligation or legal right.

Nonetheless, recent literature has already voiced a strong criticism that the concept of labor mobility being the main solution to climate displacement is very limited. These schemes are based on market principles and are thus selective: they are meant for the very few skilled, young, and able workers, excluding the elderly, children, caregivers, and disabled persons, who are mostly the disaster victims. Labour movements are temporary, circular ones, and they are employer-specific, thus creating a risk of exploitation and leaving no path to permanent residency or citizenship, even for those whose islands may become uninhabitable (Farbotko & Dun, 2022). Such schemes are negatively described as treating a collective issue as an individual problem, and the economic vulnerability of the affected populace is dealt with in a piecemeal fashion while at the same time failing to give a rights-based, collective response to the potential loss of territorial sovereignty and cultural homeland. Thus, they not only run the risk of legitimizing the practice of extracting labor from climate-affected countries but also of doing so without tackling the underlying displacement crisis, given that labor mobility is one of the narrowest possible responses available (Farbotko & Dun, 2022).

Looking forward, the success of bilateralism will largely hinge on its transformation into rights-based mobility partnerships. connected with climate vulnerability. Experts speak

about those “hybrid” approaches that will include protection mechanisms in labor programs, such as the provision of pathways for reaching permanent residency to those participating in these programs for an extended period, the development of community-based selection, contributing to the creation of more robust communities, and granting the ability to transfer rights between employers (McNamara & Jackson, 2023). Nevertheless, it needs to be mentioned that bilateral labor programs remain a relevant and practical part of an immediate response strategy and should be regarded as a complementary element to developing regional and international protection systems. Their worth lies in the practical experience they create with the managed migration from vulnerable areas, which can further be used to develop more holistic and safeguarding future instruments not only for the protection of rights but also dignity even at workplace (McNamara & Jackson, 2023).

7 Persistent Challenges and Emerging Debates

Taxonomic classification of solutions is an important aspect of the debate about climate-induced migrations and refugee policies, but the difficulties of putting them into practice are rooted in very serious, interconnected difficulties. It is not just the legal technicalities that are in question politically, ethically, and conceptually—the debates are very much in the international state system. The contemporary literature is still wrestling with the very difficult questions of who is responsible for causing displacement, the strategic framing of the affected persons, and the ultimate barrier of state sovereignty. To carry out these debates is necessary for any realistic evaluation of the governance of the climate movement in the future as they decide about the burdens that will be shared, the legitimacy of responses, and the sheer possibility of radical change in the system.

7.1 Attribution and Responsibility: The Quest for Climate Justice

One of the first and hardest to solve issues is to find out who will be held legally responsible for climate change and what obligations the responsible parties will have. According to the literature, displacement is treated as a “loss and damage” situation, which means that there are no longer any adaptation measures left for such cases. It was the industrialized countries’ excessive and historical emissions that led to the crisis in the first place, while the poorest and least contributing countries were the ones to suffer most from it. This unfairness is one of the reasons why climate justice is being demanded, with the view that the countries with high emissions, both morally and perhaps legally, are the ones that have to take care of the displaced people, give them money, and give them maps with routes of how to get to safe places (Sharma, 2017; Rajan, 2021).

Nevertheless, the application of this principle on the ground is still a topic of heated debate. The establishment of the Loss and Damage Fund at COP27 (2022) and its operationalization at COP28 (2023) marks a pivotal political recognition of this obligation. Nonetheless, the main objective of the fund at the start will be to support the economic recovery and reconstruction of areas affected by climate change, rather than providing support for the migration, relocation, or legal protection of displaced people, which is not explicitly stated, thus creating a large gap between the principle of accountability and its application in terms of human mobility (Mayer, 2023). Developments at COP29 (Baku, November 2024) further shaped, but did not resolve, this accountability gap. The conference agreed on a New Collective Quantified Goal (NCQG) on climate finance, setting a floor of USD 300 billion per year for developing countries by 2035, and operationalized

the Santiago Network for technical assistance on loss and damage. Despite this, the issue of human mobility and displacement was still marginal to the central discussion on financing, with no funding window put in place for dealing with costs associated with displacement. As Mayer (2023) notes, this represents the trend that successive COP decisions pay lip service to the framework for loss and damage without putting measures in place that would address the specific challenges of climate-displaced people. COP30 (Belém, Brazil, November 2025) concluded with the “Belém Political Package,” which committed to at least tripling adaptation finance and mobilizing USD 1.3 trillion annually in climate finance by 2035, and which further operationalized the Fund through the Barbados Implementation Modalities, with the Santiago Network mandated to prioritize technical support for displacement issues. However, as at previous COPs, human mobility was folded into this broader adaptation and finance guidance rather than addressed through a dedicated, binding outcome of its own.

The process of making the state responsible for damage incurred across borders has proven to be a rather difficult task. The complexity of climate attribution science and socio-economic analyses makes it virtually impossible to prove causation in relation to the actions of a certain state causing emissions and resulting in the displacement of certain individuals and their communities, which cannot be addressed in individual cases of asylum application. Thus, researchers start looking for ways to build collective or even state-to-state accountability models, instead of trying to sue individuals or companies directly. One of these options includes the introduction of national “climate refugee” visas or quotas by the highest emitting countries at the expense of the Loss and Damage fund or within the framework of bilateral agreements mentioning historical responsibility (McAdam & Burson, 2023). The main discussion is not about the existence of such responsibility, but about ways to turn this into assistance and protection schemes based on rights rather than charity.

7.2 Securitization vs. Human Rights Framing: Competing Narratives

The topic of climate migration has not just become the object of political discussions and media attention but also turned into a battlefield that has major consequences in terms of policymaking. One of the trends that can be found in scholarly literature is the securitization of climate migrants, which implies that they are perceived as potential security risks for the regions that they are trying to reach, since they may pose a threat to the economic or even military stability of those regions. Under this narrative, which is supported by populist rhetoric, migration appears to be a growing threat and therefore legitimates such measures as the strengthening of borders, restrictive asylum policies, and militarized response strategies (Bettini, 2013; Boas & Rothe, 2023). The idea of securitization is quite effective politically, yet, from an ethical and evidentiary perspective, it is an absolutely inappropriate one because it denies the humanity of the displaced persons while forgetting that historically, it has been the destination countries, not the displaced, who have polluted the earth. The approach is destined to cause more of what it means to prevent, which is an escalation of a global crisis.

The opposite point of view is a growing tendency towards human rights discourse, which is being advocated by academics and activists. The discourse emphasizes the humanity, agency, and natural rights of migrants and refugees. Migration is viewed as adaptation, a legit form of exercising the right to life, to health, and to have an adequate standard of living amid the environmentally-induced disruptions. The objective is to hold governments

accountable by establishing legal obligations to respect, protect, and realize the rights, thus ensuring that the policy-making regarding admittance, presence, and integration is based on non-discrimination, participation, and accountability (Scott, 2023). The human rights-based discourse becomes more and more empowered by evolving legal interpretation within the UN Human Rights Committee in such cases as *Teitiota v New Zealand*, where the connection between environmental degradation and violations of the rights to life and freedom from cruel, inhuman, or degrading treatment was established. The very heart of the discussion lies in viewing the climate-displaced population as either a problem to manage or rights-holders who require solutions.

7.3 The “Sovereignty” Barrier: The Architecture of Impediment

Given all these considerations, the hardest barrier identified within the literature is the established idea of state sovereignty, particularly the sovereignty of states to regulate who enters and leaves the state’s territory. Indeed, international refugee law can be defined as an exceptional principle to this notion of state sovereignty. The calls for establishing new instruments or interpreting the notion of protection broadly are a clear manifestation of an attempt at challenging the core of state sovereignty. Sovereignty in relation to migration control remains one of the topmost sovereign rights of states, especially for states in the global North, and they remain extremely reluctant to surrender even the slightest bit of their sovereignty over the regulation of border movement (Gerver, 2018). The question of sovereignty arises from the political objections toward the signing of any convention that would admit the entry of “climate refugees” automatically, since doing so may open Pandora’s Box of unlimited liability.

The literature looks at the possibility of and ways to “sovereignty bargains” being made. This requires the development of protection systems where states are given enough control and predictability to win them over. The proposals make it clear that migration pathways will be planned and managed. For instance, there will be regional free movement agreements, pre-negotiated bilateral quotas, or disaster-related temporary protection regimes, all of which allow states to control the size, timing, and situation of entry (McNamara & Jackson, 2023). These approaches aim to unite the two concepts of sovereignty and solidarity by putting states in the position of active governance rather than in the passive one of waiting for spontaneous arrivals. Besides, supporting the stabilization and resilience of the communities is also turned into a sovereignty-welcoming move as it is aimed at minimizing the need for people to be displaced across borders in the first place, although it is acknowledged that there will be certain circumstances when displacement will become inevitable in the case of existential threats (Milan, 2023; McNamara & Jackson, 2023).

The sovereignty challenge cannot be treated as a fixed situation anymore; rather, it has turned into a negotiation arena. The framing of future climate displacement governance is dependent upon building politically acceptable options that rescale human movement from a sovereignty-daring crisis into one of international climate adaptation and cooperation. Trust must be established, the advantages of regulated pathways for all parties must be shown, and the narrative that links border control and national security must be constantly attacked, together with the use of the securitized discourse around it. The discussion is now proceeding to an almost practical acceptance that, notwithstanding the myth of absolute sovereignty, if the interconnectedness of the world is taken into

consideration, the political realities of state consent must be properly understood in the solutions that are to be designed (Milan, 2023).

The most tangible expression of this negotiation thus far is the 2023 Falepili Union Treaty signed between Australia and Tuvalu, which deserves further consideration as an exemplary case of a newly emerging phenomenon of “contingent sovereignty” in international climate law. According to this agreement, Tuvalu agrees to impose an important restriction on its sovereignty because it gives Australia a right to consultation – essentially a veto – of all foreign agreements that Tuvalu enters into on matters pertaining to its national security. In return, Australia guarantees Tuvaluan nationals access to permanent residency in Australia, along with assistance in adapting to climate change such that Tuvalu can remain a nation-state even after becoming uninhabitable. This is a perfect example of how the “sovereignty bargain” principle described above can be made into practice: Tuvalu negotiates away part of its sovereignty rights owing to the existence of an emergency beyond its capacity to solve it on its own. Such an approach also poses serious legal questions at an international level: Is it possible for a state to sell out its sovereignty in order to save itself from extinction? What would be the status of a government in exile when its homeland becomes non-existent? Is it possible to duplicate the success of the Falepili approach elsewhere? These questions position the Falepili Union not merely as a bilateral curiosity but as one of the most significant developments in climate governance in recent years, and one that any serious analysis of sovereignty and climate displacement must engage directly.

8 Conclusion

The current systematic literature review established the existence of a considerable and generally recognized void of protection in international law, regarded by most scholars as a problem, thus presenting the 1951 Refugee Convention as a totally inadequate instrument for dealing with the climate change-induced displacement. The review argued that the essential features of the Convention, namely the state linkage of a very real fear of persecution and the possession of a determined civil or political status, were in direct contrariness to the indifferent, multiple causes, and, in most cases, gradual impact of climate in the case of displacement. The scholarly and policy debate in response to the issue turned to a governance approach that was multi-layered rather than a single legal solution. In the short run, the most workable pathways included the evolutionary interpretation of human rights law as a source of complementary protection and the expansion of regional frameworks like the OAU Refugee Convention and the Cartagena Declaration. The medium-term consensus recognized the need to strengthen soft-law instruments, particularly the Global Compacts and the Platform on Disaster Displacement, as necessary steps for building normative consensus and practical state experience. The long-term aspiration continued to be the creation of a new binding instrument, although this was acknowledged to be dependent on overcoming the enormous political barriers of state sovereignty and negotiating the difficult debate between securitized and human rights-based narratives. In the end, the literature pointed out that bridging the protection gap would be a matter of a pragmatic, polycentric strategy that utilizes existing law, encourages regional innovation, and gradually builds the political will required for a fair and comprehensive future framework.

9 Future Research Directions

The review pointed out several major shortages in the current literature that need further exploration:

- I. Quantitative Analysis of Displacement Patterns: The standardization of data collection and modeling would be a big help not just for the prediction of cross-border climate displacement in terms of its scale, timing, and routes but also for policy targeting through informed decision-making that is based on accurate projections instead of merely speculative ones.
- II. Domestic Litigation Strategies: It is necessary to conduct empirical research into the use of domestic and regional courts to non-refoulement climate cases and other rights-based arguments through analysis of both successful and failed litigation to come up with new, more effective advocacy models.
- III. The Role of Corporate Responsibility: The topic of corporate responsibility for large emissions in displacing people and their involvement in funding protection, resettlement, or adaptation measures lacks literature that thoroughly discusses legal and ethical implications.
- IV. Effectiveness of Adaptive Migration Schemes: A longitudinal assessment of the social-economic impacts and the protection risks of labor mobility programs and humanitarian visas would help to account for their real effectiveness as adaptive measures and to inform the design of more rights-based mobility partnerships.

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