

Climate refugee and international law

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Abstract:

The increase in extreme weather events, rising sea levels, desertification and other consequences of climate change have given rise to a disturbing reality: that of climate refugees. International law, which governs the rights and responsibilities of States and individuals globally, is confronted with the growing size of these vulnerable populations in the absence of a precise definition or a determined international legal framework to them. This raises crucial questions about the protection of climate refugees and the obligations of states towards them.

Thus, by understanding the complex nature of this phenomenon, it becomes imperative to find innovative and collaborative solutions to ensure the protection and dignity of those displaced by climate change.

Keywords: climate refugees, International law, climate change, protection,

INTRODUCTION

In recent decades, the phenomenon of climate change has become the world's foremost concern. As temperatures rise, sea levels rise, and extreme weather events become more frequent and severe, the consequences of climate change began to affect even the population and create what are now called "climate migrants" or "climate refugees". The latter are forced to leave their homes to flee the harmful effects of



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environmental degradation and climate-related disasters. Here, the plight of climate migrants raises profound questions about human rights, security and accountability, which the field of international law seeks to address. In this context is integrated our subject **“climate refugee and International Law.”**

In fact, there is not yet a consensus on the definition of "climate refugee". Or, "Different notions collide in an often confused debate: climatic and/or environmental refugees, climatic and/or environmental displaced persons, climatic stateless persons, climatic migrants, disaster victims, etc".¹ But what is important to know is that "environmental migrants" or "climate refugees" refer to individuals or groups of people who are forced to leave their homes due to environmental factors such as natural disasters, sea-level rise, desertification, and other climate-related changes.

The International law is “the set of legal rules, norms and standards that apply between sovereign states and other entities legally recognized as international actors.”² The contribution of international law has been

¹ Much of the debate, especially among jurists who contrast the legal definitions of “refugee” or “internally displaced” with the extensive use of these notions in militant discourse, concerns the respective merits of these different terms. See: M. BENNETT, A. GARNER, How do environmental conservation laws interact with environmental aspects of water laws?, *Environmental and planning law journal*, vol. 31/1, January 2014, p. 3-10.

Otherwise, "Climate migrants" are not legally considered refugees under international refugee law. Hence, the term "Refugee" is a legal term that has a very specific meaning centered on a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion"(Art. 1, 1951 Refugee Convention). Here, the Convention does not recognize the environment as a persecutory agent. BOON, "**5 facts on climate migrants**", United Nations University IEHS, 2015/11/26, <https://ehs.unu.edu/news/news/5-facts-on-climate-migrants.html>

² In its broadest sense, international law provides normative guidance as well as methods, mechanisms and a common conceptual language to international actors, primarily sovereign states, but increasingly also international organizations and certain individuals.... See: shaw (M), "**International law**", Britannica, consulted on 11/08/2023 at 17:52 <https://www.britannica.com/topic/international-law>



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developed by the evolution of the subjects of international law by going beyond the classic questions of war, peace and diplomacy to include human rights, economic and commercial questions, space law and international organizations.

Historically, the concept of climate refugees is relatively recent. Hence, it has only appeared in recent decades as its appearance has been linked to climate change. Discussions about climate refugees have gained prominence as the effects of climate change, such as sea level rise, desertification, extreme weather events and loss of natural resources, have begun to have a significant impact on vulnerable populations around the world.

On the other hand, it was not until the 1990s that one of the first significant mentions of the issue of climate refugees in an international legal context took place during the negotiations around the United Nations Framework Convention on Climate Change. (UNFCCC). It was adopted in 1992 at the Earth Summit in Rio de Janeiro, and it laid the foundation for subsequent negotiations on measures to mitigate the effects of climate change.

In contrast, even though the 1951 Refugee Convention and its 1967 Protocol do not explicitly include people fleeing environmental change as refugees, they provide protection for people who are forced to leave their country due to a well-founded fear of persecution, which can sometimes be linked to environmental factors. In addition, human rights treaties, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, protect the rights of migrants, including the right to life, security and an adequate standard of living.



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In 2006, the Stern Review, titled “The Economics of Climate Change: Highlights from the Stern Review on the Economics of Climate Change”, drew attention to the links between climate change, migration and security.¹ In Addition, the General Assembly on the United Nations created in 2019 the mandate of a Special Rapporteur on the implications of human rights obligations for the enjoyment of a safe, clean, healthy and sustainable environment. This mandate includes monitoring issues related to environmental migrants.²

Actually, there is not yet a specific international legal framework for climate refugees, and the debate on the issue is still ongoing. The status of climate refugees is often complex, as the reasons for their displacement can be linked to both environmental factors and social, economic and political factors. Therefore, there is not yet an international consensus on how to define, identify and protect climate refugees. On the other hand, the number of climate refugees is increasing in an astonishing way. Hence, according to "Internal displacement monitoring centre", the frequency of displacements due to climate change observed between 2008 and 2016 is one person every second. The forecasts are equally alarming: the United Nations High Commissioner for Refugees estimates that 200 to 250 million people will potentially be displaced by 2050.³

¹ You can find it on this website : chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ise.unige.ch/isdd/IMG/pdf/la_Stern_review.pdf

² For more, see : Special Rapporteur on human rights and the environment, The United Nations, <https://www.ohchr.org/en/special-procedures/sr-environment>

³ "**Climat : 250 millions de nouveaux déplacés d'ici à 2050, selon le HCR**", UN News, publié le 2008/10/12 et consulté le 11/08/2023 à 20:55. <https://news.un.org/fr/story/2008/12/145732>



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So, what is the problem of climate refugee in international law? Can we speak of a “climate refugee” in international law? Do climate refugees have legal status? Or should we initiate a protective law for climate refugees?

I- Can we speak of “climate refugee” (or “environmental” or “ecological”) in international law?

The rapidly changing global climate has given rise to new challenges and complex issues, among which the problem of climate refugees stands out. This constantly evolving concept raises important questions in the field of international law. As climate change leads to natural disasters and environmental degradation, many people find themselves forced to leave their places of residence due to direct environmental threats.

However, the recognition of climate refugees as a specific category within international law remains uncertain and complex. Or, the absence of a legal definition of the climate refugee in international law (A) as well as the absence of a specific law for climate refugees (B) have shown that the situation of these refugees is still in question.

A- Absence of a legal, or agreed, definition in international law

The increasing impact of climate change on people around the world has given rise to urgent and complex questions concerning the protection and rights of people who are forced to leave their places of residence due to these environmental phenomena. The expression “climate refugee”, phonetically close to that of “political refugee”, obviously plays into this legal register.¹

¹ Legoux (L), " *Climate migrants and the reception of refugees in France and Europe* ", Revue Tiers Monde, 2010, p.56



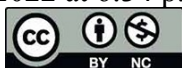
The fate of the so-called "climate refugees" is still the subject of debate. Hence, several names have been created to designate these individuals (ecological refugees, environmental refugees, climate refugees, eco-refugees, environmental migrants, etc.)

In this sense, geographers, anthropologists, political scientists and jurists come together around the issue of climate refugees to discuss their existence, their number and the causes of their flight. ¹On the other hand, there are several terms used: Refugees and displaced persons, climatic, ecological or environmental. The diversification of terminology translates the imbrication of the purely environmental cause with other elements, in the triggering of these movements. " Poverty, undernourishment and lack of drinking water, armed conflicts, expropriations, floods, natural disasters, diseases and lack of access to healthcare, are all factors triggering a forced exodus." ²This has led to the absence of a universally accepted legal definition for these climate refugees in international law.

Thus, the concept of "climate refugee" is a new notion that goes beyond the classic categories of law. Indeed, according to Article 1:A of the Geneva Convention, a "refugee" is a person who "well-founded fear of being persecuted on account of his race, religion, nationality, membership of a social group or its political opinions (...)". This definition does not cover victims of natural, ecological or climatic disasters. In addition to satisfying

¹Morel (M) and de Moor (N), "*Climate migrations: what role for international law?*", Open Editions Journal, 2012, p. 61. <https://journals.openedition.org/conflicts/18580>

² « Pauvreté, sous-alimentation et manque d'eau potable, conflits armés, expropriations, inondations, catastrophes naturelles, maladies et manque d'accès aux soins, sont autant de facteurs de déclenchement d'un exode forcé. » Mimoun (EH), "*The future of environmental refugees in international law*", Predictice, published on 08/01/2021 and consulted on 19/08/2022 at 6:34 p.m. <https://blog.predictice.com/itw-afdd-martial-jeugue>



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one of the aforementioned grounds, the asylum seeker must demonstrate that he has left his country and the latter no longer protects him. However, climatic migration is not exclusively inter-state, it can also be internal (peri-urban, local, regional migration, etc.).¹

In the absence of a legally binding or universally accepted definition of "climate refugee" in international instruments, different legal experts, academics and non-governmental organizations have proposed various definitions based on their views and areas of expertise.

The International Organization for Migration (IOM) has defined climate migration as " the movement of a person or groups of people who, primarily for reasons of sudden or gradual change in the environment due to climate change, are forced to leave their usual place of residence, or choose to do so, temporarily or permanently, within a State or across an international border."² On the other hand, according to Mary Robinson Foundation - Climate Justice: "Climate refugees are individuals or groups of people who are forced to leave their homes due to environmental, climatic and ecosystem degradation-related changes, which interact with political and economic pressures."³ Furthermore, the declaration of the UN World

¹ Legoux (L), ***"CLIMATE MIGRANTS AND RECEPTION OF REFUGEES IN FRANCE AND IN EUROPE"***, Revue Tiers Monde, CAIRN, 2010, pages 56. https://www.cairn.info/revue-tiers-monde-2010_-4-page-55.htm?content=article

²« le mouvement d'une personne ou de groupes de personnes qui, principalement pour des raisons de changement soudain ou progressif de l'environnement dû au changement climatique, sont obligés de quitter leur lieu de résidence habituel, ou choisissent de le faire, de manière temporaire ou permanente, au sein d'un État ou à travers une frontière internationale.» ***Environmental Migration*** ", IOM, <https://www.migrationdataportal.org/en/themes/environmental-migration>

³"Les réfugiés climatiques sont des individus ou des groupes de personnes qui sont contraints de quitter leur domicile en raison de changements environnementaux, climatiques et liés à la dégradation de l'écosystème, qui interagissent avec des pressions politiques et économiques." For more, see the site: <https://www.mrfcj.org/>



Conference on Refugees and Migrants in 2018 recognizes that the negative impacts of climate change have growing implications for the ability of States to protect and respect human rights, and can also aggravate situations of conflict and instability, thus encouraging forced migration.¹

These examples show the diversity of perspectives and approaches in defining climate refugees. It is important to note that debate continues in the international and legal community regarding the need for a formal and universally accepted definition.

The lack of consensus on a precise and clear definition of “climate refugee” in international law may be justified given the difference in the impact of the environment on individuals. In other words, the difficulties related to the definition of climate refugees stem from the diversity of the impacts of environmental degradation. In this sense, the climatic factor cannot be isolated from migration triggers such as poverty, malnutrition, lack of drinking water, drought or armed conflict.²

He then seems to be opting for an identification of climate refugees according to precise criteria “in order to come up with a definition and possibly to consider a categorization likely to favor legal proposals”.³ The degradation of the environment can then have a direct impact on individuals

¹The intergovernmental conference to adopt the Global Compact for Safe, Orderly and Regular Migration is organized in Marrakech, Morocco, on 10 and 11 December 2018. See: A/CONF.231/3*

²“It is an increase in vulnerability under the effect of several parameters (stress) including poverty, discrimination, malnutrition, etc. , which will trigger migration”. S. Pecourt, ***“Protection of displaced persons and climate refugees: forced migrations, human rights and climate change”***, Continuing education certificate in human rights, University of Geneva, 2008, 40 pp, p. 8.

³ “Afin d’en dégager une définition et éventuellement d’envisager une catégorisation susceptible de favoriser des propositions juridiques. » Mimoun (EH), op.cit.



and make them victims of natural disasters, or indirectly following armed conflicts.

B- Absence of a specific right for climate refugees

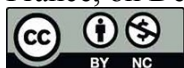
With regard to climate refugees and unlike political refugees or people fleeing armed conflicts, they do not yet have a clearly established legal framework to define their status and rights. Hence, the Geneva Convention on Refugees (1951) and its 1967 protocol define the legal status of refugees and the rights granted to them. However, this convention mainly concerns people fleeing persecution because of their race, religion, nationality, social group or political opinion. It does not explicitly recognize climate refugees as a separate category. This lacuna raises fundamental questions concerning the protection of these people, their access to asylum, as well as the responsibilities of States in terms of reception and assistance.

On the other hand, even if there was no binding international text that specifically and explicitly addressed the issue of climate refugees. There are various international instruments that have addressed the issue of population displacement linked to climate change in general (1) or during an armed conflict (2).

1- In general

The issue of population displacement linked to climate change has been addressed in various international frameworks, although indirectly or partially. For example, the Paris Climate Agreement ¹, adopted at COP21 in

¹“The Paris Agreement is a legally binding international treaty on climate change. It was adopted by 196 Parties at COP 21, the United Nations Climate Change Conference in Paris, France, on December 12, 2015. It entered into force on 4 November 2016.” " ***The Paris***



2015, does not explicitly address climate refugees, but recognizes the need to strengthen the global response to loss and damage associated with the adverse effects of climate change, including including forced migration. Article 8 of the agreement establishes an Executive Committee on Loss and Damage, but does not specify a concrete mechanism or framework to address the issue of population displacement.¹

For example, at the Third United Nations World Conference on Disaster Risk Reduction in 2015, the Sendai Framework for Disaster Risk Reduction recognized that disaster risk can lead to population displacement. Although not specific to climate refugees, it does address the problem of disaster-related displacement, which can be exacerbated by climate change.

Not to mention some resolutions of the United Nations General Assembly have addressed the issue of population displacements linked to climate change and disasters. For example, resolution 68/214 of 2013 entitled “Reducing loss and damage from natural disasters”. The latter encourages action to help countries cope with population displacement and losses resulting from natural disasters.

2- During an armed conflict

Despite the non-recognition of climate refugees by the 1951 Geneva Convention and its 1967 protocol. Discussions are ongoing on how to address population displacement caused by climate change, particularly in contexts of armed conflict . Conflicts can compound the effects of climate

Agreement ", UNCC, <https://unfccc.int/fr/a-propos-des-ndcs/l-accord-de-paris#:~:text=L'Accord%20de%20Paris%20parle,m%C3%A9canisme%20technologique%20that%20works%20well> .

¹ Ibid.



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change and exacerbate environmental problems, which can contribute to the forced migration of vulnerable populations. However, although they are not binding texts, there are reports that address the links between climate change, conflicts and population displacements and provide scientific assessments and analyzes of the consequences of climate change on societies and natural resources, which could lead to forced displacement.

In this sense, the IPCC report in 2007 also addressed the links between climate change, conflicts and population displacements.¹ Furthermore, the New York Declaration for Refugees and Migrants in 2016 recognized that migration related to environmental challenges and the effects of climate change require special attention even if this statement does not relate specifically to climate refugees.²

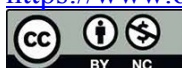
Additionally, the 2018 Report of the UN Special Rapporteur on the human rights of migrants addresses the migration and human rights implications of climate change, highlighting the particular challenges faced by forced migrants.³

For example, the International Committee of the Red Cross (ICRC) on Armed Conflict and Climate Change in 2020 released a report to explore the humanitarian implications of climate change in the context of armed

¹" *Report of the Intergovernmental Panel on Climate Change (IPCC): 2007 Climate Change Report* ", https://www.ipcc.ch/site/assets/uploads/2018/02/ar4_syr_fr.pdf

²" *New York Declaration for Refugees and Migrants* ", UNHCR, <https://www.unhcr.org/en/new-york-declaration-for-refugees-and-migrants>

³" *United Nations Special Rapporteur on the Human Rights of Migrants* ", UN, <https://www.ohchr.org/en/special-procedures/sr-migrants>



conflict. In countries like Somalia, weakened by decades of conflict and fragility, droughts and floods have repeatedly displaced people.¹

Although it does not explicitly address climate refugees, it highlights the importance of considering environmental challenges in conflict situations.

II- Should we initiate an international law protecting climate refugees?

The increase in climate change has led to a series of dramatic consequences, among which the increase in the number of climate refugees. These people are being forced to flee their homes due to climate change, highlighting a complex and urgent challenge for the international community. The fundamental question here is whether refugee status is necessary? Thus, on the actors' side, the main question ranges from “how to protect these emigrants” to “how to protect themselves from these immigrants”.

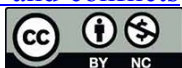
We will then examine the theoretical reasons for the need to have the status of climate refugee (A) as well as analyze the current situation (B).

A- Theoretically

Putting in place protective international law for climate refugees is a complex and hotly debated issue. The reasons for establishing such a status are numerous and take into account the growing challenges posed by climate change.

1- Protection of human rights

¹“ ***Climate change and conflicts*** ”, ICRC, <https://www.icrc.org/en/our-activities/climate-change-and-conflicts>



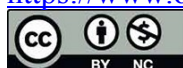
Climate refugees are often forced to leave their places of residence due to environmental disasters, such as droughts, floods, storms and rising waters. These forced displacements can violate their fundamental human rights, including the right to life, security and dignity. In this sense, the Intergovernmental Panel on Climate Change and the Human Rights Council, in its resolution 41/21, point out that climate change has effects on the rights of individuals, such as right to life, self-determination, development, health, food, water and sanitation, housing and others...¹

In addition, the Human Rights Council has underlined the importance of an articulated approach between human rights and climate change for the design and implementation of policies to deal with climate change. It also encourages “addressing the issue of human rights in discussions regarding the United Nations Framework Convention on Climate Change (UNFCCC) and the 2030 Agenda for Sustainable Development.”²

The protection of climate refugees by protecting their fundamental rights is therefore a line of thought that serves to ensure the dignity and well-being of these vulnerable populations. For example, the right to life is a fundamental principle of international human rights law, and it is essential to take steps to protect this right for climate refugees. According to Article 2 of the European Convention on Human Rights, the right to life "is one of the most important rights of the Convention."

¹“ ***Human rights and climate change: frequently asked questions***”, HCCR, F n°38, 2021, p.2

²«aborder la question des droits de l'homme dans les discussions concernant la Convention-cadre des Nations Unies sur les changements climatiques (CCNUCC) et le Programme de développement durable à l'horizon 2030.» “ ***Integrating Human Rights into the United Nations Framework Convention on Climate Change (UNFCCC)*** ”, NU, <https://www.ohchr.org/en/climate-change/integrating-human-rights-unfccc>



More recently, in 2020, the UN Human Rights Committee considered that “people fleeing the effects of climate change and natural disasters should not be sent back to the country of origin if their fundamental human rights are threatened”.¹ Here, despite the absence of any implicit mention of “climate refugee”, the Committee seeks to open up possible international protection to people displaced for ecological reasons.

2- Ensuring international stability and security

The establishment of a climate refugee status is a complex but crucial challenge to face the growing challenges related to climate change. Thus, massive population movements caused by climate change can lead to conflicts, social tensions and regional instability. This is why we must guarantee international stability and security by granting legal status to climate refugees and guaranteeing them adequate protection. Moreover, by granting legal status to climate refugees, States can on the one hand control the annual immigration rate of these refugees as well as facilitate organized and manageable movements and on the other hand prevent such situations and put an end to chaotic and unregulated flows of movements that could compound problems for all parties involved.

Thus, establishing a legal status for climate refugees can be seen as a form of international solidarity. It can create better coordination between countries to manage population displacements caused by climate change and will subsequently facilitate the sharing of information, the implementation

¹“ ***The decision of the United Nations Human Rights Committee on climate change is a strong signal, according to UNHCR***”, UNHCR, <https://www.unhcr.org/fr/actualites/briefing-notes/la-decision-of-the-united-nations-human-rights-committee-on-the->. For more, see also: RADILOFE R., “ ***Fundamental rights and freedoms put to the test by the climate crisis***”, in MONNERIE N., PONZO C. (dir .), Law and political science put to the test crises of the 21st century, L'Harmattan, 2020, P.5+6



of common policies and the creation of financial support mechanisms for countries. most affected.

This will therefore allow developed countries to share responsibility for the consequences of their actions. Hence, the effects of climate change are often caused by greenhouse gas emissions from industrialized countries (DPs). International law protecting these refugees can recognize the responsibility of States in the forced displacement of populations and oblige them to take measures to protect those affected.

The establishment of a legal status for climate refugees therefore requires cooperation and coordination between States. Non-governmental organizations and humanitarian agencies will also play a key role in the implementation and management of this status, in order to ensure adequate support for displaced persons.

B- Practically

Creating climate refugee status presents several complex difficulties due to the political(1), legal(2) and other(3) challenges involved.

1- Political challenges

The issue of climate refugees is therefore often at the heart of political debates, both nationally and internationally. States are actually reluctant to recognize these people as legitimate refugees and could benefit from climate protection, as this could have implications for their immigration policies and humanitarian aid obligations. Some States might also fear that the admission of climate refugees will be perceived as an implicit recognition of their own responsibility for climate change. It is therefore difficult to imagine that the



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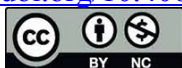
United States and the European Union recognize their responsibilities in climate change, which would require them to spend hundreds of billions of dollars each year.

So, States have divergent interests when it comes to climate refugees. Some states, especially those most affected by climate change, may be in favor of climate refugee status, while others may oppose it, fearing economic and political consequences.

Thus, recognizing a climate refugee status can potentially restrict the sovereignty of States by imposing protection and reception obligations and require considerable financial, logistical and social resources, which could constitute a major obstacle for many countries.¹

In addition, flows of climate refugees can create pressures between and on States. Pressures between the host state and the state of origin, when countries affected by climate migration feel economic, social and political pressures due to the influx of displaced populations. Here, the host state may fear an overload of its infrastructure and social services, which may generate resentment towards the countries of origin or the industrialized countries considered responsible for climate change. And the pressures exerted on States when they are directly affected by the consequences of climate change and confronted with phenomena such as the rise in sea level, desertification or the increase in extreme meteorological phenomena may be confronted with internal pressures to act quickly and protect their people.

¹For more, see: Moine (A), "*The Implications of Climate Migration for State Sovereignty*", International Climate Protection and State Sovereignty, VOLUME 18, N°1, OpenEdition Newspapers 2018,
<https://doi.org/10.4000/vertigo.19450>



These pressures can translate into relocation policies, adaptive urban planning and the development of resilience strategies.

Furthermore, regarding the question of whether States are obliged to host climate refugees, the reception of refugees depends largely on the national policy of each State and its interpretation of existing international obligations. Some States might be more inclined to welcome these people in distress, while others might be more reluctant in the absence of a clear legal basis.

2- Legal challenges

Unlike political refugees fleeing persecution, climate refugees are forced to move due to environmental changes such as rising sea levels, desertification, more frequent storms, etc. It is difficult to define precise criteria for determining when a displacement is directly linked to the effects of climate change, because these effects can be intertwined with other socio-economic factors.¹ Thus, the addition of climate refugee status may potentially conflict with existing protections for other categories of displaced persons, such as political refugees or internally displaced persons.

Furthermore, the responsibility of industrialized countries, which underlies claims for compensation for loss and damage, is not easy to establish. Thus, despite the consecration of the principle of “common but differentiated responsibilities” in the 1992 Climate Convention, which takes into account the causal link between the degradation of the global environment and the

¹See: Mimoun (EH), op, cit .

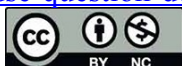


production and consumption models of developed countries . ¹Establishing the legal responsibility of States and international actors in the face of climate change and the displacement it causes is complex. Since climate effects are often the result of a combination of factors, including greenhouse gas emissions, industrialization and deforestation, it is difficult to prove a direct causal relationship between specific actions of a state and the displacement of populations. Thus, we find developed countries like the United States which have always been tenacious opponents of this principle.

Conclusion

In conclusion, the issue of climate refugees in international law remains complex and multifaceted. While there is growing recognition of the need to address this issue, the concrete legal frameworks and binding agreements continue to evolve. As the impacts of climate change continue to escalate, the climate refugee debate is likely to evolve as well, potentially leading to more comprehensive legal solutions.

¹For more, see: Damian (M) and Criqui (P), "***Climate: the thorny question of the historical responsibility of industrialized countries***", Université Grenoble Alpes (UGA), The conversation, 2022, published on 06/11/2022 at 6.30pm. <https://theconversation.com/climat-lepineuse-question-de-la-responsabilite-historique-des-pays-industrialises-193511>



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