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THE LEGAL STATUS AND PROTECTION OF
CLIMATE REFUGEES
IN THE EU

YÜKSEK LİSANS TEZİ

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ABSTRACT

In the near future, climate change will challenge the coping mechanism of many countries, and overwhelm some by aggravating current difficulties such as extreme weather events, food safety, shortage of water, etc., while putting fundamental human rights in a jeopardy. There is growing evidence that climate change-related occurrences are specifically affecting the underdeveloped countries and the Member States of the European Union (EU) will be the lowest affected. Even though taking refuge in another country is a last resort solution to dealing with the effects of climate change, human flows to the EU are going to be inevitable if no measures will be taken. However, the lack of an accepted definition of climate refugees means that there is no structural capacity in the international system to provide. According to its underlying values, the EU has a crucial role in reaching a consensus or finding a solution to this problem, and if the EU wants to protect its core values and abide by its human rights policy, preventive and protective approaches need to be established. Otherwise, the EU will have to endure inevitable outcomes, such as massive immigration, destabilization and security problems. In this thesis, the need to address protection by foretelling potential human rights violations that may occur in the future as to protection of climate refugees will be underlined and actions that should be taken by the EU will be recommended.

Keywords: EU law, climate change, climate refugees, legal status, legal protection

ÖZET

Yakın gelecekte, iklim değışikliđi tarafından birçok ülkenin başa çıkma mekanizması sekteye uğratılacak ve aşırı hava olayları, gıda güvenliđi, su sıkıntısı gibi mevcut zorluklar artarak temel insan haklarını tehlikeye sokacak boyuta ulaşacaktır. İklim değışikliđine bađlı olayların özellikle az gelişmiş ülkeleri etkilediđine dair artan kanıtlar vardır ve Avrupa Birliđi üye devletleri en az etkilenenlerden olacaktır. Başka bir ülkeye sığınmak, iklim değışikliđinin etkileriyle başa çıkmak için son çare olsa dahi, herhangi bir önlem alınmadıđı takdirde Avrupa Birliđi'ne insan akışı kaçınılmaz olacaktır. Bununla birlikte, kabul gören bir iklim mülteci tanımının olmayışı, uluslararası sistem tarafından sağlanacak yapısal bir kapasitenin olmadığı anlamına gelmektedir. Temel değerlerine göre, Avrupa Birliđi'nin bu sorun karşısında bir uzlaşmaya varılması veya bir çözüm üretilmesinde çok önemli bir rolü vardır ve Avrupa Birliđi temel değerlerini korumak ve insan hakları politikasına uymak istiyorsa, önleyici ve koruyucu yaklaşımların oluşturulması gerekmektedir. Aksi takdirde, Avrupa Birliđi, büyük oranda göç alımı, istikrarsızlaşma ve güvenlik sorunları gibi kaçınılmaz sonuçlara katlanmak zorunda kalacaktır. Bu makalede, haklarında yasal tanıma ve korumanın bulunmaması nedeniyle iklim mültecileri bakımından gelecekte gerçekleşme ihtimali olan potansiyel insan hakları ihlallerini gözler önüne sererek koruma sağlanması gerekliliđinin altı çizilecek ve Avrupa Birliđi'ne alması gereken aksiyonlar konusunda önerilerde bulunulacaktır.

Anahtar Kelimeler: AB hukuku, iklim değışikliđi, iklim mültecileri, hukuki statü, hukuki koruma

THE LEGAL STATUS AND PROTECTION OF CLIMATE REFUGEES IN THE EU

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ÖNSÖZ

*Tüm bu süreçte benden desteklerini esirgemeyen Sevgili Ailem'e
teşekkürlerimi bir borç bilirim.*

ABBREVIATIONS

CEAS	Common European Asylum System
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CJEU	Court of Justice of the European Union
CoE	Council of Europe
COP	Conference of the Parties
CO₂	Carbon dioxide
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
EACH-FOR	Environmental Change and Forced Migration Scenarios
ECRE	European Council on Refugees and Exiles
EU	European Union
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
GHG	Greenhouse Gas
ICCPR	International Covenant on Civil and Political Rights
IDP	Internally displaced person
IOM	International Organization for Migration
IPCC	Intergovernmental Panel on Climate Change
OHCHR	United Nations Human Rights Committee
PACE	Parliamentary Assembly of the Council of Europe
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNHCR	United Nations High Commissioner for Refugees

UNPD United Nations Population Division

UNU-EHS UN University Institute for Environment and Human Security



INTRODUCTION

“Human rights have a home, it is where people reside, live, work, grow old; it is in their regions, municipalities and neighbourhoods. It is also in their home that people experience disasters.”

Josef Neumann (Germany, SOC)

The most known climate change-induced effects are the temperature rises, ocean acidification, droughts, desertification, sea-level rise, melting sea ices and ice sheets and extreme rainfalls. Their results are and will continue to be a threat to the fundamental needs of hundreds of millions. In the near future, climate change will challenge the coping mechanism of many countries and overwhelm some of them by aggravating current difficulties such as extreme weather events, food safety, shortage of water, safety, health, conflict, etc., while putting basic human rights in a jeopardy.

Although climate change is a common problem, its impacts are unevenly distributed and discriminatively felt mostly in the weakest regions by their disadvantaged populations. Since underdeveloped countries are less capable to deal with it and more unprotected to its adverse effects, developed countries should take a crucial step and play a big part in global efforts to combat and mitigate climate change. Because these impacts are expected to increase soon and eventually some countries become no longer able to sustain a living and the only choice left is going to migrate to the less affected countries permanently.

In 2005, Janos Bogardi, as the director of the UN University Institute for Environment and Human Security (UNU-EHS), stated that:

“There are well-founded fears that the number of people fleeing untenable environmental conditions may grow exponentially as the world experiences the effects of climate change and other phenomena. This new category of ‘refugee’ needs to find a place in international agreements. We need to better anticipate

support requirements, similar to those of people fleeing other unviable situations.”¹

However, since then not a single country took responsibility and subsequently, the interest for taking action has been lost. Given that taking refuge in another country is a last resort solution to dealing with the effects of climate change, human flows to the EU are going to be inevitable if no measures will be taken. Accordingly, some Member States of the EU will face important challenges linked to the refugee crisis, if there will not be any preparation for developing appropriate policy and legal framework before it becomes too late. Since the EU and its Member States position in such an incredibly difficult angle, being in the Mediterranean as a bridge between Sub-Saharan Africa, North Africa and the Middle East that will be the most affected by climate change, the EU generally and especially its southern Member States might face significant problems.

The first problem those individuals, who are forced to flow because of climate change, encountered is the lack of an accepted legal definition at the international, regional and national levels. As a result, there is no structural capacity in the international system to provide protection. The key legal documents introducing the internationally accepted “refugee” term are the 1951 Refugee Convention and its 1967 Protocol. Even though there have been some attempts to extend the existing definition of the refugees to include those who will be displaced by climate change reasons, climate refugees have not been recognized as a problem in any international agreements or national and regional legislation. Nor is there an international or even national body charged with providing protection for climate refugees. In the full sense of the word, climate refugees are not mentioned and protected under any legal roof. The absence of a legal definition because of ignorance is a core problem that impedes the action of protection or assistance. The need for recognition of the problem and its dimensions and

¹ UN News (2005). “UN University calls for recognition of those displaced by gradual environmental change”. Access Date: 01.06.2020. Available at: <https://news.un.org/en/story/2005/10/156422-un-university-calls-recognition-those-displaced-gradual-environmental-change>

preparedness to address it are however vital because, as Jean Lambert said, the solution would not be found without first recognizing the climate refugees' existence.²

It is crucial to emphasize in referring to terminology choice in this thesis since the choice of a word has crucial political and legal consequences. Besides the lack of legal definition, terminology complexity for climate refugees has also persisted, such as while International Organization for Migration (IOM) prefers the term of climate migrants, United Nations High Commissioner for Refugees (UNHCR) prefers the term of climate refugees. In this thesis, the term of climate refugee was chosen to underline the emergency of these unimaginable disastrous scenarios and the vitality of provision of protection needed. Put it simply, that is because whereas a migrant can be someone who chooses to move which gives it a meaning of voluntariness, a refugee has no choice other than to move to another country.

The second problem those individuals encountered is the lack of a comprehensive and specific legal framework that contains legal protection mechanism and an effective asylum procedure at the international, regional and national levels. Human rights and the protection of climate refugees are intertwined with each other since the consequences of climate change will threaten the enjoyment of many rights that are recognized in EU law. The individuals who seek asylum due to climate change-induced effects will have to face with a worsened condition throughout the borders of the EU or en route to migration. They are not nonetheless in the scope of the Common European Asylum System (CEAS) and therefore cannot benefit from the protection from EU law. If the EU wants to protect itself and abide by its human rights policy, preventive and protective approaches need to be established. Otherwise, in addition to severely violating its human rights standards, the EU will also have to confront inevitable outcomes, such as massive immigration, destabilization and security problems. In this context, the EU must lead as a global power to fill this legal gap.

² Lambert, J. (2002). *Refugees and the Environment: The Forgotten Element of Sustainability*. The Greens/European Free Alliance in the European Parliament, p. 4.

For the foregoing reasons, the thesis aimed to underline the importance of filling the gap both at the academic studies and international legislative framework and mainly to draw the attention of the EU, as the strong political name and legislative power, to the legal status of the climate refugees with special emphasis to the absence of legal protection. The thesis explores the recent researches, reports and data about the reality and possibility of climate change-induced migration and the actions which are already being taken both by the EU and the other international actors. Pursuant to analyzing current debates at the EU and international level, it will offer to the EU to define these challenges and adopt new measures to cope with. In that respect, the structure of the thesis is as follows:

In **Chapter I**, climate change and its effect will be analyzed on the basis of a wide range of research results as a new migration phenomenon. First, the severely affected regions and countries that have a long migration history between the EU will be explained. Secondly, to fully understand the climate change-induced migration, various scenarios will be considered under the division of climate change-induced sudden and slow-onset disasters and conflicts. The key aspects will be the vulnerability and adaptation capacities of the countries and individuals.

In **Chapter II**, at first, the scope of the term “refugee” and the absence of a common definition will be discussed by mainly analyzing the time that the 1951 Refugee Convention drafted. Also, whether any individual whose migration is linked to climate change can be qualified as refugees defined by the 1951 Refugee Convention will be examined. Secondly, the pioneer cases about human rights violations arose by climate change-induced effects, individuals seeking international protection on obtaining legal status and protection against deportation will be scrutinized. Thirdly, some worth-mentioning attempts in the policy field both at the EU and the international level regarding reference to climate change-induced migration and the status of climate refugees will be examined.

In **Chapter III**, at first, the legal protection framework for the climate refugees at the EU level will be discovered in light of the hierarchy of norms. Secondly, the

policy of the EU on migration and asylum will be discussed after reviewing the CEAS. The obligations and their implementation by the Member States will be discussed in light of the European Court of Human Rights (ECtHR) judgments. Lastly, the international responsibility of the EU will be discussed, since the region is home for the countries that carry low-risk to the climate change-induced effect while also producing the highest metric tons of CO₂.

In **Chapter IV**, the main focus will be on the actions that should be taken by the EU. For this reason, at first, the importance of prevention mechanism and the unpreparedness of the EU will be discussed regarding climate change-induced disasters by focusing on the mistakes made during the most recent sudden-onset disaster “COVID-19”. Secondly, to set an example for future actions of the EU, the prototypes that feature the legal status and protection of climate refugees from the Member States will be shown. Thirdly, initiating an additional protocol to the European Convention on Human Rights (ECHR) that covers the right to a healthy environment across the EU Member States and concluding an international agreement with the UN with the legal ground arising from EU law will be suggested. Moreover, for an alternative to that, the EU’s legislative procedure will be reviewed and adopting a regulation will be suggested. Lastly, the implementation of human rights principles by the EU and the Member States in that field will be suggested to be improved.

Chapter I

CLIMATE CHANGE AS A NEW MIGRATION PHENOMENON

1. The Effects of Climate Change

Greenhouse gas (GHG) emissions exacerbated mainly by environmental pollution and over usage of resources.³ It resulted in global warming and changed the world's climate irreversibly.⁴ At this point, the only option remained is to minimize further risks that will arise by climate change.⁵ Climate change potentially will multiply the risks and accelerate its effects. Temperature rises, ocean acidification, droughts, desertification, sea-level rise, melting sea ices and ice sheets, extreme rainfalls are therefore expected to threaten the fundamental needs for hundreds of millions and to increase crises on food, fresh water, health and safety.⁶

The climate change-induced impacts are unevenly distributed and discriminatively felt mostly in the weakest regions and especially by their disadvantaged populations.⁷ Approximately 971 million individuals reside in the regions that carry the highest exposure risk to climate change-induced effects in the near future.⁸ The countries that have both the highest risk rate to climate change-induced effects and

³ UN Environment (2019). *Global Environment Outlook – GEO-6: Summary for Policymakers*. Cambridge University Press, pp. 6-7; The European Commission. “Climate change and environmental degradation”. Access Date: 18.03.2020. Available at: https://ec.europa.eu/knowledge4policy/foresight/topic/climate-change-environmental-degradation_en

⁴ UN Environment (2019), pp. 6-7.

⁵ Ibid, p. 7.

⁶ Institute for Economics & Peace (2019). *Global Peace Index 2019: Measuring Peace in a Complex World*. Sydney, p. 43; Fabius, L. & Brende, B. “From the Arctic to the Sahel: uniting against climate disruption for a more secure future for all”. Access Date: 01.01.2020. Available at: <https://www.nanseninitiative.org/staff-member/from-the-arctic-to-the-sahel-uniting-against-climate-disruption-for-a-more-secure-future-for-all/>; The European Commission. “Livelihoods at risk”. Access Date: 18.03.2020. Available at: https://ec.europa.eu/knowledge4policy/foresight/topic/climate-change-environmental-degradation/online-resource/livelihoods-migration_en

⁷ The European Commission. “Livelihoods at risk”. Access Date: 18.03.2020. Available at: https://ec.europa.eu/knowledge4policy/foresight/topic/climate-change-environmental-degradation/online-resource/livelihoods-migration_en

⁸ Institute for Economics & Peace (2019), p. 45

the lowest adapting capacity are in Africa and the Middle East, which are the regions that have long migration history towards the EU.⁹

The UN predicts that in Africa approximately 250 million individuals will face the harmful effects of climate change.¹⁰ The projected population growth, in combination with the multiple stresses including rising temperatures, desertification, water scarcity and food insecurity will pose a massive burden on the region.¹¹ For instance, rising temperatures, sea-level rise, salinization and drought have ignited the concerns in the future of the main water resources including Lake Chad, Niger River, Nile Delta that might lose most of the space that provides food and water security by fishing and agriculture, while the coastal cities Alexandria, Benghazi and Algiers have been under the risk of submerging.¹²

In that regard, Africa is also frequently cited as an example of a place where scarcity resulting from the degradation of natural resources has given rise to violent conflicts forcing millions to flee.¹³ According to the United Nations Environment Programme (UNEP), nearly every Sub-Saharan African country will suffer from water famine by 2025.¹⁴ As Sub-Saharan Africa has been rated as medium to extremely high risk to water famine, prior conflicts that arose by drought-affected non-arable areas can help in predicting future effects of lack of water.¹⁵ For instance, the effects of drought and water scarcity created conflicts both through political instabilities and terrorist organizations (e.g. Boko Haram) in the recent history of Somalia and Nigeria.¹⁶ As a result, individuals were driven into other areas both in-country and outside the country for protecting themselves from violence, poverty and hunger.

⁹ Institute for Economics & Peace (2019), pp. 47-48.

¹⁰ Werz, M., & Hoffman, M. (2016). "Europe's twenty-first century challenge: climate change, migration and security". European View, p. 147.

¹¹ Ibid., p. 148; Care Danmark (2016). *Fleeing Climate Change. Impacts on Migration and Displacement*, p. 24.

¹² Werz, M., & Hoffman, M. (2016), p. 147; Institute for Economics & Peace (2019), p. 52; Care Danmark (2016), p. 24; Brauch, H. G. (2010). *Climate Change and Mediterranean Security: International, National, Environmental and Human Security Impacts for the Euro-mediterranean Region During the 21st Century: Proposals and Perspectives*. European Institute of the Mediterranean, p. 33.

¹³ Sakellari, M. "Climate change, migration and public health", p. 1.

¹⁴ Institute for Economics & Peace (2019), pp. 49, 52.

¹⁵ Ibid.

¹⁶ Ibid., p. 52. Care Danmark (2016), p. 21; Brauch, H. G. (2010), p. 33.

The countries that carry the highest risk on water-scarcity and will become unliveable are also partly in the Middle East, which is particularly affected by temperature rise, desertification and dust storms.¹⁷ Predictions mostly say that the unending conflict in Syria began by rural exodus, arose by the drought and ruined the livelihoods in the villages, which will probably be the case in Israel, Palestine and Jordan too due to the current situation in the Jordan and Yarmuk rivers.¹⁸

Taken as a whole, while climate change is expected to worsen over time, absolute accuracy on predicting the severity of its impacts in every country is impossible because of the involvement of various factors.¹⁹ Consequently, this requires accepting climate uncertainty at some angle.²⁰

2. The Current Climate Change Scenarios: Migration

In light of the Maslow's hierarchy of needs, climate change-induced impacts prevent individuals from accessing the most fundamental needs, including physiological safety (food, drinking water, etc.) and security (protection from conflict, violence, etc.).²¹ Consequently, individuals will choose to migrate in order to protect themselves from those risks.²² As can be seen, the bond between climate change and migration has multiple layers and thus climate change-induced impacts cannot be identified as the only reason for migration but often intersects with other elements.²³

Predictions mostly show that climate change-induced effects are not going to happen at an identical speed and effect.²⁴ Most of all, vulnerability and adaptation

¹⁷ Care Danmark (2016), p. 22; Institute for Economics & Peace (2019), p. 49.

¹⁸ Care Danmark (2016), p. 21; Brauch, H. G. (2010), p. 33.

¹⁹ Magnan, A., Garnaud, B., Billé, R., Gemenne, F., & Hallegatte, S. (2009). *The future of the Mediterranean from impacts of climate change to adaptation issues*. France, p. 33.

²⁰ Ibid.

²¹ El Haggag, S. (2007). *Sustainable Industrial Design and Waste Management: Cradle-to-cradle for Sustainable Development*. Academic Press, p. 136.

²² Ibid.

²³ Magnan, A., Garnaud, B., Billé, R., Gemenne, F., & Hallegatte, S. (2009), p. 25; Ammer, M., Mayrhofer, M., Randall, A., & Salsbury, J. (2014). *Time to Act: How the EU can lead on climate change and migration*. In S. Brugger (Ed.). Belgium: Heinrich-Böll-Stiftung, European Union, p. 10.

²⁴ Reynaud, S. (2017). "Climate Refugees - To a Global Legal Statute", p. 3; Flavell, A. (2014). *IOM Outlook on Migration, Environment and Climate Change*. In M. T. Chazalnoël (Ed.) Switzerland: International Organization for

capacities are decisive en route to migrate.²⁵ In order to fully understand the climate change-induced migration, various scenarios should be considered. There are different types of migration, such as forced – voluntary / temporary – permanent / internal - international.²⁶

2.1. Climate Change Induced Events

Sudden-onset climate events, such as extreme rainfalls, storms, hurricanes, typhoons, cyclones, mudslides and monsoon floods might immediately result in a massive number of displacement for survival although individuals are more likely to choose to stay near to the disaster area.²⁷ However, displacement can be both temporary or long-term depending on the recovery potential, the severity of the disasters and the fact of whether individuals are exposed to inhuman circumstances in unsustainable camp conditions.²⁸ Furthermore, both its extent and duration on getting back to regular life and inhuman conditions during the stay can seem as having jumped out of the frying pan in the fire and eventually could lead to cross-border displacement.

Slow-onset climate events such as salinization of land, decrease in soil productivity, ice melt, flooding, droughts, desertification and decreased water availability can weaken the general living conditions progressively.²⁹ Since spreading over time, it is more difficult to estimate the number of displaced people by slow-onset events. Because, at first, individuals might choose to short-term or temporary migration

Migration, p. 5; Kraler, A., Noack, M., & Cernei, T. (2012). “Climate Refugees: Legal and Policy Responses to Environmentally-Induced Migration”, p. 13.

²⁵ Flavell, A. (2014), p. 5.

²⁶ Reynaud, S. (2017), p. 3; Flavell, A. (2014), p. 5; Kraler, A., Noack, M., & Cernei, T. (2012), p. 13.

²⁷ Kälin, W. (2012). *Conceptualising Climate-Induced Displacement*. In: McAdam, J. (Ed.) *Climate Change and Displacement. Multidisciplinary Perspectives*, p. 85; Kraler, A., Noack, M., & Cernei, T. (2012), p. 3; Ammer, M., Mayrhofer, M., Randall, A., & Salsbury, J. (2014), p. 9.

²⁸ Kälin, W. (2012), p. 85.

²⁹ Care Danmark (2016), pp. 13, 19; Ammer, M., Mayrhofer, M., Randall, A., & Salsbury, J. (2014), p. 9; Thomas, A. (2013). “Protecting People Displaced by Weather-Related Disasters and Climate Change: Experience from the Field”. *Vt. J. Envtl. L.*, 15, p. 814; Kälin, W. (2012), p. 90; Brown, O. (2008). *Migration and Climate Change*. IOM Migration Research Series No. 31. Geneva: International Organization for Migration, p. 19; The Nansen Initiative. “Climate change, cross-border displacement and human rights: is there a protection gap and will COP21 help close it?” Access Date: 01.01.2020. Available at: <https://www.nanseninitiative.org/climate-change-cross-border-displacement-and-human-rights-is-there-a-protection-gap-and-will-cop21-help-close-it/>

to cope with its effect.³⁰ However, when their land became unliveable through the time they will most certainly be forced to decide whether to migrate permanently.³¹

In addition, sea-level rise can have the worst and most destructive effect both as a sudden-onset climate event and slow-onset climate event.³² Because, in addition to the contribution to the floods, storms, salinization, removing the breeding ground for fish, it carries the possibility of submergence of low-lying islands and coastal cities.³³

Finally, the closest scenario to the current refugee regime is climate change-induced conflict which might be triggered indirectly by a decrease in essential resources in agriculture-based regions where poverty outweighs.³⁴ Additionally, ancient history and the current humanitarian crisis in certain regions show that this can get worsened if climate refugees enter the territory of other individuals who may also have limited resources.³⁵ Consequently, these individuals might suffer from both natural and human-made disasters.³⁶

To sum up, even at first there will be many internally displaced persons (IDPs), who will stay at home, camps or closest cities, externally and permanently displaced person numbers will drastically rise once the climate change-induced effects aggravated.³⁷

³⁰ Kälin, W. (2012), p. 90.

³¹ Ibid.

³² Kraler, A., Noack, M., & Cernei, T. (2012), p. 4; Kraler, A., Cernei, T., & Noack, M. (2011). *Climate refugees: Legal and policy responses to environmentally induced migration*. DGIPOL Policy Department C: Citizens' Rights and Constitutional Affairs Study. Brussels: European Parliament, p. 27; Care Danmark (2016), p. 17; Curtis, K. (2015). "Refugees vs. Migrants? The Word Choice Matters". Access Date: 01.01.2020. Available at: <https://www.undispatch.com/refugees-vs-migrants-the-word-choice-matters/>

³³ Care Danmark (2016), p. 17.

³⁴ Kälin, W. (2012), p. 86; Kraler, A., Cernei, T., & Noack, M. (2011), p. 23.

³⁵ Kraler, A., Cernei, T., & Noack, M. (2011), p. 23; Institute for Economics & Peace (2019), p. 54; Care Danmark (2016), p. 20.

³⁶ Fabius, L. & Brende, B.

³⁷ Gahre, C. (2011). *The Nansen Conference Climate Change and Displacement in the 21st Century*. Oslo, Norway: Norwegian Refugee Council, p. 18; Scott, M. (2014). "Natural Disasters, Climate Change and Non-Refoulement: What Scope for Resisting Expulsion under Articles 3 and 8 of the European Convention on Human Rights?" *International Journal of Refugee Law*, 26(3), pp. 408-409; Reynaud, S. (2017), p. 4; Kälin, W. (2012), p. 85.

2.2. Vulnerability Assessment

Climate change will affect the world, but still the effects of climate change will not be evenly distributed both between the countries and their populations. Every human on earth will be vulnerable generally to climate change, however, the number of more severely affected individuals will continue to increase due to the other various vulnerability factors.³⁸

In light of the human rights perspective, the general meaning of vulnerable individuals is the individuals who due to belonging to a particular group whose rights are more disastrously at risk and need additional caring in order to benefit from human rights.³⁹ Even though in the international protection area the term vulnerability has consistently been used, there is no particular and common definition both in the EU and international levels. This ambiguous gap thus creates discretion when assessing vulnerability. However, several assessments are common.

In order to make a solid vulnerability assessment, both state and individual-level factors must have to be taken into account. In a state-level analysis, the main focus must be on geography, settlement patterns, urbanization, socio-economic conditions, population density, governance and environmental factors.⁴⁰ On an individual level, the main categories must be income level, age (e.g. children, elderly), disability, gender, ethnicity and seeking asylum.⁴¹

³⁸ UN Environment (2019), p. 14.

³⁹ Mustaniemi-Laakso, M., Heikkilä, M., Del Gaudio, E., Konstantis, S., Casas, M.N., Morondo, D., Hegde, V.G. & Finlay, G. (2016). *The protection of vulnerable individuals in the context of EU policies on border checks, asylum and immigration*. Work Package No. 11 – Deliverable No. 3, pp. 3-4.

⁴⁰ UN Environment (2019), p. 14; Scott, M. (2014), p. 408; The Nansen Initiative. “Climate change, cross-border displacement and human rights: is there a protection gap and will COP21 help close it?” Access Date: 01.01.2020. Available at: <https://www.nanseninitiative.org/climate-change-cross-border-displacement-and-human-rights-is-there-a-protection-gap-and-will-cop21-help-close-it/>

⁴¹ International Federation of Red Cross and Red Crescent Societies (2016). *World Disasters Report, Resilience: Saving Lives Today, Investing for Tomorrow*. Sanderson, D. & Sharma, A. (Eds.), p. 43; The Nansen Initiative. “Climate change, cross-border displacement and human rights: is there a protection gap and will COP21 help close it?” Access Date: 01.01.2020. Available at: <https://www.nanseninitiative.org/climate-change-cross-border-displacement-and-human-rights-is-there-a-protection-gap-and-will-cop21-help-close-it/>

First of all, the absence of income is the core variable as this determines whether an individual can migrate or will be trapped in a dangerous place that is threatening access to basic livelihoods and almost the right to life.⁴² The children, elderly, women, disabled and asylum seekers are generally in the scope of this factor.

Second of all, in the case of climate change-induced migration, the children, elderly and disabled will need specific attention in regard to their age and lack of independence (e.g. immaturity, dementia, inability, etc.) in addition to the difficulty they have been facing during the disastrous effects of climate change, cross-border displacement and the asylum-seeking process.⁴³

Third of all, the importance of gender equality can be seen via the domination of male out-migration throughout history, where women are mostly excluded from deciding migration and became particularly vulnerable due to sharing a massive proportion of poverty as the result of the lack of education and economic dependence.⁴⁴

Fourth of all, livelihoods insecurity will directly affect agriculture-based countries, while indirectly affecting conflicts in there, especially between the ethnic groups.⁴⁵

Lastly, in the context, the fact that asylum seekers can be vulnerable due to being forced to use unsafe routes to seek protection and contact with human traffickers to arrive safe zone can double the burden of the above-mentioned vulnerable groups.⁴⁶

The difficulties climate refugees will face are often aggravated due to vulnerabilities linked to the above-mentioned factors. Due to the lack of legal definition and status, they will also become illegal in a safe destination. As a result, they will often

⁴² Kraler, A., Cernei, T., & Noack, M. (2011), p. 19.

⁴³ *Tarakhel v. Switzerland* [2014] ECtHR, Application No. 29217/12, para. 99.

⁴⁴ Kraler, A., Cernei, T., & Noack, M. (2011), pp. 18-19; Ammer, M., Mayrhofer, M., Randall, A., & Salsbury, J. (2014), p. 17.

⁴⁵ Fabius, L. & Brende, B; Care Danmark (2016), p. 20; Law, T. (2019). "The Climate Crisis Is Global, but These 6 Places Face the Most Severe Consequences". Access Date: 25.03.2020. Available at: <https://time.com/5687470/cities-countries-most-affected-by-climate-change/>

⁴⁶ Mustaniemi-Laakso, M. et al., pp. 9-10.

choose to hide, have to work in exploitative conditions and therefore could not access fundamental services such as social services, education, health care, etc.⁴⁷



⁴⁷ Mustaniemi-Laakso, M. et al., pp. 9-10.

Chapter II

CLIMATE REFUGEES

1. Scope of the Term “Refugee” and Absence of Common Definition

Given that the word choice also has crucial political and legal consequences, addressing climate change-induced migration requires discussing the terminology. Among the various terms that have been used, "climate refugee" and "climate migrant" have remained predominant.⁴⁸ However, the term climate migrant is not helpful to understand the dynamics of climate change-induced migration as it represents a substantial amount of preference about fleeing. That is because it expresses somewhat voluntariness, while in reality, if someone is moved in the midst of a sudden-onset climate event, they quite probably have almost no option other than leaving.⁴⁹ On the other hand, the term "climate refugee" is crucial as it demonstrates the involuntariness of the move while showing that those individuals have to leave their homes to find safety and protection elsewhere.⁵⁰ Therefore, considering them as migrants diminishes their voice and makes it much easier to deny the challenges they are currently facing and will face in the future.⁵¹

The international legislative framework on refugee protection is an important part of human rights protection within its complexity.⁵² Historically, the general human rights movement initiated after the long history of world wars led to the creation of the Universal Declaration of Human Rights (UDHR) in 1948.⁵³ The UDHR provided protection from persecution for everyone while adding that the individuals can seek

⁴⁸ Ammer, M., Mayrhofer, M., Randall, A., & Salsbury, J. (2014), pp. 4, 18.

⁴⁹ Ibid., p. 18.

⁵⁰ Sgro, A. (2009). *Views on, and Possible Solutions to, the Environmental Refugees Issue Within the European Union*. Oliver-Smith, A. & Shen, X. (Eds.) In *Linking Environmental Change, Migration & Social Vulnerability*. Germany: UNU Institute for Environment and Human Security (UNU-EHS), No.12/2009, p. 78; Curtis, K. (2015).

⁵¹ Curtis, K. (2015).

⁵² Rouleau-Dick, M. (2018). “Why environmentally displaced persons from low-lying island nations are not climate “refugees”: a legal analysis”, p. 1.

⁵³ Ibid., pp. 1-2; Pazarcı, H. (1989). *Uluslararası Hukuk Dersleri II. Kitap*. Ankara: Ankara Üniversitesi Siyasal Bilgiler Fakültesi, p. 179.

asylum and benefit the protection of other States.⁵⁴ However, the Declaration did not specifically define who can be an asylum seeker. Following that, the 1951 United Nations Convention on the Status of Refugees was established with the aim of reducing vital deficiencies in refugee protection by creating an international legal instrument.⁵⁵ Subsequently, it was extended in 1967 via an additional protocol, and time and geography related limitations on its scope also were removed.⁵⁶ However, during that time the main focus was on the battles and their destructive effects. For that reason, the 1951 Refugee Convention and its 1967 Protocol Relating to Status of Refugees described the refugee simply as an internationally displaced individual who has a solid reason to be afraid of being persecuted on grounds of ethnicity, belief, citizenship, involvement in a particular group or political ideology.

The 1951 Refugee Convention and the 1967 Additional Protocol were successful in achieving their purpose quite well. However, while looking at the current and/or imminent dangers, there is no doubt on that they could not keep up with the dynamism persistent in the international scenario, on the ground that the types of persecution are changing in reality and new additions continue to build on to the treatment that was common during world wars.⁵⁷ To simplify, climate change-induced displacement could not be anticipated as a type of persecution that occurred during the world wars and as a matter, of course, climate refugees became excluded from the legal and policy area.

Despite all, individuals whose migration is linked to climate change may be qualified as refugees defined by the 1951 Refugee Convention in some instances, such as if the country of origin has failed to provide protection from persecution that arose from climate change.⁵⁸ However, this will not be a common path in regard to other climate change-induced effects. For example, the lack of sufficient food and drinking

⁵⁴ Article 14, the UDHR; Pazarcı, H. (1989), p. 170.

⁵⁵ Rouleau-Dick, M. (2018), pp. 1-2.

⁵⁶ Ibid.

⁵⁷ Ibid., p. 13; Tripathi, S. (2018). "Climate Refugees Acknowledging the Existence of an Imminent Threat". 4(1) NLUJ Law Review, pp. 23, 25; Curtis, K. (2015).

⁵⁸ Ammer, M., Mayrhofer, M., Randall, A., & Salsbury, J. (2014), p. 19; Kälin, W. (2012), pp. 94, 96-97; Rouleau-Dick, M. (2018), p. 6.

water may ignite the violence or violent conflict that can occur linked to their ethnicity, belief, nationality or participation in a particular group.⁵⁹ As a result, cross-border displacement can occur.⁶⁰ However, since this narrative belittles the problem and limits the needed protection and the reality is that only a tiny percentage of those individuals can be granted international protection, a new law needs to be created considering the deficiencies of current instruments to protect climate refugees.⁶¹

2. Climate Refugees as an Emerging Trend in Climate Change Litigation

There are several cases about human rights violations that arose by climate change-induced effects, individuals seeking international protection on obtaining legal status and protection against deportation. Those significant decisions given by the different courts of different legal systems worldwide show that the number of cases will rise in the near future and will pressure the governments all around the world to take action on climate change by holding them accountable. For this reason, the pioneer cases that pave the way most significantly will be analyzed below.

2.1. Additional Ground for Persecution

In the *AD (Tuvalu)* case which was decided in 2014, the applicants asserted that they will be at risk of climate change-induced effects such as poverty through deportation to Tuvalu and added that they will be wide apart from their close family members. The New Zealand Immigration and Protection Tribunal found that ruining family bonds unjustly by deportation would be exceptional for granting the humanitarian residence permit.⁶² However, the Tribunal specified that climate change-induced effects cannot be the sole reason while granting status.⁶³

⁵⁹ Kälin, W. (2012), p. 94.

⁶⁰ Ibid.

⁶¹ Sgro, A. (2009), p. 77.

⁶² *AD (Tuvalu)* [2014] New Zealand: Immigration and Protection Tribunal, 501370-371, pp. 1, 8, 9, paras. 2, 30, 32.

⁶³ Ibid.

Nevertheless, while looking at the recent history and the degree of climate change-induced disasters, it can be seen that Tuvalu citizens, such as a massive number of citizens were displaced by a cyclone in 2015, need protection.⁶⁴ In brief, although this case provided an insight in regard to individual assessment, it did not bother to create a common path either for Tuvalu citizens and other victims affected by climate change indiscriminately. This case simply considered climate change as an additional factor for displacement and underestimated the damage that it made.

2.2. States' Responsibilities Under the Human Rights

There are several decisions around the world given by various international, regional and national bodies that have a different legal and social background. However, their main motives still are based on the States' responsibilities in light of the breaches that occurred on human rights due to climate change.

Firstly, the Republic of Colombia requested an advisory opinion regarding the State's responsibilities in the context of the environmental degradation that potentially will arise by its open sea activities in the Caribbean Sea.⁶⁵ In its *Advisory Opinion* that was given in 2017, the Inter-American Court of Human Rights stated that the climate change-induced impacts affect several human rights, including the right to life, the right not to be forcibly displaced, the right to peace, alongside with the right to a healthy environment, and then highlighted the States' responsibilities for the damage that they have caused on nationwide and worldwide.⁶⁶ This is the first recognition given by a regional mechanism regarding climate change effects on human rights that held the States accountable internationally.

⁶⁴ Care Danmark (2016), p. 17.

⁶⁵ Banda, M. L. (2018). "Inter-American Court of Human Rights' Advisory Opinion on the Environment and Human Rights". ASIL Insights: Volume 22, Issue 6. Access Date: 19.08.2020. Available at: https://www.asil.org/insights/volume/22/issue/6/inter-american-court-human-rights-advisory-opinion-environment-and-human#_ednref32

⁶⁶ *Advisory Opinion OC-23/17 on the Environment and Human Rights* [2017] the IACtHR, Requested by the Republic of Colombia, pp. 17-18, 24-25, 29-30, paras. 38, 55, 66.

Secondly, in *Future Generations* case which was decided in 2018, twenty-five young applicants have claimed that multiple establishments in Colombia such as the central government, some municipalities and several companies are posing a threat to their human rights including the right to a healthy environment, the right to life, the right to health, the right to food and the right to water. The main claim is that the government is failing to comply with the provisions ensured in the Paris Agreement regarding reducing deforestation in the Colombian Amazon. In its decision, the Supreme Court of Justice of Colombia held that those rights are fundamentally intertwined with the environment and the ecosystem for maintaining life.⁶⁷ The significant importance of this case lay down on the Paris Agreement, which shows that it can be a useful tool regarding claiming rights.

Thirdly, in the *Urgenda* case, an environmental group and nine-hundred citizens made a complaint regarding that the Dutch government must do more for avoiding climate change in general.⁶⁸ The District Court ruled that the State has responsibilities on taking necessary steps for avoiding and minimizing the risks and harmful effects of climate change.⁶⁹ The Dutch government appealed the Court's decision and claimed that in these proceedings the right to life and family life cannot be invoked.⁷⁰ The Hague Court of Appeal upheld the Court's decision and the government appealed that decision too.⁷¹ In 2019, the Supreme Court held that in order to provide protection for the human rights that were threatened by climate change, individuals might invoke their rights to the States, and then added that the States are responsible to protect their citizens from climate change in accordance with their obligations under the ECHR.⁷² This decision highlighted that States must do much better than required legally in a fight with climate change and reminded that there is no upper limit for doing that. Especially, it highlighted for the parties of the ECHR that they have liabilities if they are not doing their best for protecting the right to life and the right to family life.

⁶⁷ *Future Generations v. Ministry of the Environment and Others "Demanda Generaciones Futuras v. Minambiente"* [2018] STC, 4360-2018, p. 13.

⁶⁸ *Urgenda Foundation v. State of the Netherlands* [2019] Supreme Court of the Netherlands, 19/00135.

⁶⁹ *Ibid.*, p. 2.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*, pp. 16, 29.

Lastly, a case brought before the United Nations Human Rights Committee (OHCHR) in 2019 by the residents of *Torres Strait Islanders* with a claim that Australia has violated the right to life, family and culture that covered in the International Covenant on Civil and Political Rights (ICCPR)⁷³ by failing on reducing emissions and adjusting climate adaptation measures.⁷⁴ The islanders highlighted the effects of climate change are wiping their home and culture from the world with no solutions behind. This case carries importance for focusing on culture and family which for some have primary importance. There is no doubt that the decision will bring another perspective into climate change litigation once it is concluded. Also, the reason this case brought before the OHCHR is that the Australia does not have a regional human rights body. Although the OHCHR decisions have international impact, the duration for the conclusion of a case takes approximately four years which is a slow process for something directly related to the existence of islands and the right to life for many.⁷⁵

2.3. Protection Against Deportation

The most significant case in regard to recognition of climate refugees is the *Ioane Teitiota* case which was concluded in 2020. Ioane Teitiota sought asylum in New Zealand due to various climate change-induced effects and sea-level rise in Kiribati. However, his application and further appeals were denied because there was not any persecution required for the 1951 Refugee Convention. After exhausting domestic remedies, he brought the case before the OHCHR, claiming that New Zealand had violated his right to life protected under the ICCPR.

Although the Committee accepted that climate change-induced impacts constitute severe threats to the right to life, it held that the applicant had not asserted any evidence on life-threatening conditions and added that it is not an immediate danger,

⁷³ United Nations (1996). International Covenant on Civil and Political Rights. UNTS Volume Number 999.

⁷⁴ *Petition of Torres Strait Islanders to the UN Human Rights Committee Alleging Violations Stemming from Australia's Inaction on Climate Change*, 13 May 2019.

⁷⁵ Mckernan, L., Arena, C. & Duyck, S. (2020). *States' Human Rights Obligations in the Context of Climate Change: 2020 Update* by The Center for International Environmental Law and The Global Initiative for Economic, Social and Cultural Rights is licensed under a Creative Commons Attribution 4.0 International License. In Marie Mekosh (Ed.), p. 48.

given the ten to fifteen-year timeframe, so there has an adequate period for intervening to protecting citizens from a country becoming submerged.⁷⁶

Besides, the Committee emphasized that the rest of the world should help the countries significantly impacted by climate change. For doing this, the countries should not deport individuals who suffer from a violation of their right to life as a result of climate change-induced circumstances irrespective of whether it is caused either through sudden-onset climate events or slow-onset climate events.⁷⁷ The decision is groundbreaking because it calls the States to make comprehensive assessments for granting protection.

To sum up, although the decisions of OHCHR are not binding on countries, this decision leaves the door open for climate refugees for seeking asylum with a burden to prove life-threatening conditions.

2.4. Some Remarks on These Judgments

These cases offer tips to the international legal system to get prepared to address climate change-induced migration. Overall, these cases analyzed in this section provide a glimpse of human rights as a tool on climate change litigation at both international, regional and national levels. They presented paths for individuals while giving recognition to human rights-based claims in order to address, mitigate and compensate climate change-induced problems. There is no doubt that the human rights protection of those individuals is the answer. The broad scope of right-based claims gives us an insight that everything can detrimentally be affected by climate change, whether it is life, family life, environment, culture or existence of a nation.

However, these cases were mainly focused on right-based arguments rather than legal status. While these decisions generally recognize the interconnectedness

⁷⁶ *Ioane Teitiota v. New Zealand* [2020] UN Human Rights Committee, CCPR/C/127/D/2728/2016, pp. 10, 12, paras. 9.4, 9.12.

⁷⁷ *Ibid.*, p. 9, paras. 9.3, 9.11.

between climate change and human rights, there is so far no solid action regarding the protection under the legal recognition. Among them, the *Ioane Teitiota* case arose the only one that made a reference to climate refugees and recognized their existence, although it did not recognize the applicant as a climate refugee.

Legal recognition is an essential element for forcing and tracking States to abide by their positive obligations arising from human rights. The possible reason for this unwillingness is that whether it is an international, regional or national court, no one wants to take the responsibility to create something from the bottom that will have a worldwide effect. Although climate change litigation is gaining its strength, it is clear that it cannot solve the problem from scratch without giving legal recognition and will repeat itself continuously.

In sum, the current climate change litigation shows that even the courts wait for the worst to happen to recognize those individuals while using time as an excuse. But waiting for what: to wait for the climate change-induced migration to become and remain an unsolved problem in a worldwide?

3. Policy Responses

Climate change-induced migration and the status of climate refugees raise many complex issues that should be addressed and as a first step, it is important to reach a global consensus. Choosing to migrate is an important tool for the adaptation of the deteriorating effects of climate change. Therefore, those individuals need to be supported via addressing the needed protection before finding durable solutions.⁷⁸

As a problem of the recent history, it is yet impossible to assess its impacts on policy-making, however, the Parliamentary Assembly of Council of Europe (PACE) reiterated that the lack of legal status should be interpreted as a barrier to developing

⁷⁸ Kälin, W. (2012), p. 103.

certain policies to protect those individuals.⁷⁹ Although there is no doubt that the EU and the rest of the international community have been slow on responding, there are already some worth-mentioning attempts in the policy field.⁸⁰

3.1. European Union

The EU's concern on climate change-induced migration was initiated at first by the European Parliament's mention of climate refugees in an official document that passed in 1999.⁸¹ Since then, the European Parliament has organized several seminars, workshops, hearings on this subject with the aim of drawing the attention of the EU and international institutions to climate change-induced migration and the lack of legal recognition with a human rights-based approach.⁸² And, subsequently, in 2011, the European Parliament comprehensively analyzed protection gaps, policy responses and the EU's current legislative and policy framework, through a study named "*Climate refugees: Legal and policy responses to environmentally induced migration*".⁸³ Having pointed to the fact that different protection-related actions are required for temporary, permanent, internal or external migration types, the study suggested that the EU can take the lead in the international law area and inspire others by amending the Article 15(c) of the Qualification Directive while including the environmental disasters and using the Temporary Protection Directive during a mass influx. Also, it highlighted the fact that resettlement could be used as an option.⁸⁴

The European Commission has also addressed the topic in 2007 through sponsoring the Project entitled "*Environmental Change and Forced Migration Scenarios (EACH-FOR)*" which aims to encourage Europe on its policies regarding

⁷⁹ Verdier-Jouclas, M. C. (2019). A legal status for "climate refugees". Parliamentary Assembly, Doc. 14955, p. 3, para. 3.

⁸⁰ Reynaud, S. (2017), p. 10.

⁸¹ The European Parliament (1999). Resolution on the environment, security and foreign policy. Official Journal of the European Communities, C 128, p. 93; The European Commission (2013). Climate change, environmental degradation, and migration. Brussels, SWD(2013) 138 final, p. 6.

⁸² The European Commission (2013), SWD(2013) 138 final, p. 6, fn. 15.

⁸³ Kraler, A., Cernei, T., & Noack, M. (2011).

⁸⁴ Ibid., p. 74.

forced migration scenarios significantly raised by climate change.⁸⁵ The paper, entitled “*Climate Change and International Security*” and drafted by High Representative and the European Commission for the European Council in 2008, described climate change-induced migratory pressure as a threat to Europe and emphasized the importance of the EU’s leadership in the international area to promote security to develop its migration policy during this recent tension.⁸⁶ In a White Paper⁸⁷ drafted in 2009, the Commission provided a policy context to minimize the EU's vulnerability to climate change-induced effects.⁸⁸ The Commission described the EU in that Paper as a facilitator of national-level actions specifically for global problems and added that most of the measures can only be initiated first by the Member States.⁸⁹ The Commission also presented and analyzed the various policies as a comprehensive answer to the call of the European Council in 2009 through the Stockholm Programme⁹⁰ on carrying out the explore climate change-induced cross border migration and its impact on the EU.⁹¹

In 2011, the Council of the European Union emphasized that as a global threat climate change carries significant implications related to access to basic needs such as food, water, etc. that creates tensions for migration. Subsequently, the Council called the EU for immediate action to minimize these risks.⁹² In 2013, the Council also gave a call to the EU and its Member States to address and adopt policies in regard to climate change-induced migration, particularly in the light of development and humanitarian assistance.⁹³

⁸⁵ The European Commission (2013), SWD(2013) 138 final, p. 6; Brown, O. (2008), p. 37; United Nations University Migration Network. “Environmental Change and Forced Migration Scenarios (EACH-FOR)”. Access Date: 09.05.2020. Available at: <https://migration.unu.edu/research/migration-and-environment/environmental-change-and-forced-migration-scenarios-each-for-2.html#outline>

⁸⁶ The High Representative and the European Commission (2008). “Climate Change and International Security”. S113/08. Access Date: 09.05.2020. Available at: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/reports/99387.pdf

⁸⁷ Commission of the European Communities (2009). White Paper on Adapting to climate change: Towards a European framework for action. Brussels, COM(2009) 147/4.

⁸⁸ Magnan, A., Garnaud, B., Billé, R., Gemenne, F., & Hallegatte, S. (2009), pp. 26-27.

⁸⁹ Ibid.

⁹⁰ Council of the European Union (2009). The Stockholm Programme - An open and secure Europe serving and protecting the citizen. Brussels, 17024/09, p. 63.

⁹¹ The European Commission (2013), SWD(2013) 138 final.

⁹² Council of the European Union (2011). Council Conclusions on EU Climate Diplomacy. Brussels: 3106th Foreign Affairs Council meeting, p. 1, paras. 1-2.

⁹³ Council of the European Union (2013). Conclusions of the Council and of the Representatives of Governments of the Member States meeting within the Council on the 2013 UN High-Level Dialogue on Migration and Development and on broadening the development-migration nexus. Brussels, 12415/13, pp.6, 13 and paras. 10, 44.

The most recent document related to policies of the EU institutions, published in 2020, however mainly mentioned the long-term EU climate-neutrality objective, achieving net-zero GHG emissions by 2050.⁹⁴ Despite those efforts, climate change is already having and will continue to have impacts worldwide and unfortunately, there was not any firm policy determined on climate change-induced migration and climate refugees.⁹⁵

It is clear that the EU cares about climate change and take concrete steps over a decade. For instance, the EU is a party to the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and Paris Agreement as the only regional name.⁹⁶ However, in light of the protection of climate refugees, whereas the topic has begun gaining growing interest from the EU institutions in recent years, deeper attention and action are still essential.

In the EU, climate change has been continuously considered as an initiator of various types of crises such as environmental, security-related and humanitarian. However, apart from the above-mentioned policy responses, it is accurate to say that climate change-induced migration and climate refugees are mostly forgotten on the EU agenda. The main problem here is that climate change is not considered yet as a legal crisis by the EU.

3.2. International Level

In general terms, the international legislative framework of climate change consists of the 1992 UNFCCC⁹⁷, the 1997 Kyoto Protocol⁹⁸, the 2015 Paris Agreement⁹⁹. Among them, the Paris Agreement, which was adopted unanimously by

⁹⁴ The European Commission (2020a). Proposal for a Regulation of the European Parliament and of the Council, establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law). Brussels, COM(2020), 80 final, 2020/0036 (COD), pp. 1-2.

⁹⁵ Ibid., pp. 2-3.

⁹⁶ United Nations Climate Change. "UNFCCC Process and meetings - Parties". Access Date: 12.09.2020. Available at: <https://unfccc.int/node/61063>

⁹⁷ United Nations (1992). United Nations Framework Convention on Climate Change. UNTS Volume Number 1771.

⁹⁸ United Nations (1998). Kyoto Protocol to the United Nations Framework Convention on Climate Change. UNTS Volume Number 2303.

⁹⁹ United Nations (2015). Paris Agreement. No. 54113.

195 States and the EU, is promising because it is the first legislative document that referred to the rights of migrants and human rights, even though climate refugees were not mentioned specifically.¹⁰⁰ In comparison, the UNFCCC solely draws a structure for States on action and cooperation in regard to climate change, and the Kyoto Protocol imposes obligations to States on reducing their GHG emissions.¹⁰¹

However, the 1/CP.16 decision, reached at the 16th Conference of the Parties (COP) of the UNFCCC in 2010, invited the States to be aware of climate change-induced migration and get in the action by cooperating in coordination by underlining the need to work on this issue.¹⁰² Subsequently, the 3/CP.18 decision, reached at COP 18 of the UNFCCC in 2012, also addressed the same issue while specifically focusing on loss and damage.¹⁰³

Moreover, climate change-induced migration, the lack of legal recognition for climate refugees and their relations with the enjoyment of human rights have been analyzed and reviewed by the UN and its bodies and agencies in various instances over the years.¹⁰⁴ These will be presented here chronologically.

In the early of 1990s, the Intergovernmental Panel on Climate Change (IPCC), the UN body for assessing the science related to climate change, claimed that climate change will affect migration most heavily and the receiving countries will face numerous challenges due to the number of refugees.¹⁰⁵ Throughout the years the IPCC continued to highlight the link between climate change and migration via its reports,

¹⁰⁰ Reynaud, S. (2017), p. 18.

¹⁰¹ Ekşi, N. (2016). "İklim Mültecileri". Göç Araştırmaları Dergisi, Cilt 2, Sayı 22, p. 39.

¹⁰² UNFCCC Conference of the Parties (2010). Decision 1/CP.16 The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention. Conference of the Parties Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010, pp. 4-5, para. 14(f).

¹⁰³ UNFCCC Conference of the Parties (2012). Decision 3/CP.18 Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change to enhance adaptive capacity. Report of the Conference of the Parties on its eighteenth session, held in Doha from 26 November to 8 December 2012, (pp. 21-24).

¹⁰⁴ The Nansen Initiative. "Climate change, cross-border displacement and human rights: is there a protection gap and will COP21 help close it?" Access Date: 01.01.2020. Available at: <https://www.nanseninitiative.org/climate-change-cross-border-displacement-and-human-rights-is-there-a-protection-gap-and-will-cop21-help-close-it/>

¹⁰⁵ IPCC (1992). *First Assessment Report Overview and Policymaker Summaries and 1992 IPCC Supplement*. In: Climate Change: The IPCC 1990 and 1992 Assessments, p. 103, para. 5.0.10.

e.g. Special Report entitled “*Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation*”.¹⁰⁶

The International Organisation for Migration (IOM), known as the UN Migration Agency, became one of the dominant voices for actions to explore, has strengthened and addressed the connection between climate change and migration ever since 2007 when the 94th Session of the IOM Council during a high-level panel on Migration and the Environment was being held.¹⁰⁷

The United Nations Development Programme (UNDP) is the advocate body of the UN for change to support individuals, around the world but more specifically in developing countries, to advance the quality of life. Since 2007, the UNDP sees climate change as a global threat that will cause massive displacement and deteriorate livelihoods.¹⁰⁸

The United Nations High Commissioner for Refugees (UNHCR), known as the UN Refugees Agency, responded to the issue right after the High Commissioner Antonio Guterres's statement in 2011 by mentioning that involuntary movement shows that they are more likely refugees rather than migrants and they struggle with the absence of legal protection.¹⁰⁹ With the support of UNHCR, the Nansen Initiative has been launched in 2012 by Norway and Switzerland and aimed to build consensus on how to address potential legal and protection gaps for climate refugees.¹¹⁰ In the Nansen Initiative, the States focused on creating a common regional protection mechanism

¹⁰⁶ IPCC (2012). *Summary for Policymakers. In: Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation* [Field, C.B., V. Barros, T.F. Stocker, D. Qin, D.J. Dokken, K.L. Ebi, M.D. Mastrandrea, K.J. Mach, G.-K. Plattner, S.K. Allen, M. Tignor, and P.M. Midgley (eds.)]. A Special Report of Working Groups I and II of the Intergovernmental Panel on Climate Change. Cambridge University Press, Cambridge, UK, and New York, NY, USA, (pp. 3-21).

¹⁰⁷ Felli, R. (2012). “Managing Climate Insecurity by Ensuring Continuous Capital Accumulation: Climate Refugees and Climate Migrants”. *New Political Economy*, iFirst, (to be published), p. 6.

¹⁰⁸ *Ibid.*, p. 8.

¹⁰⁹ Guterres, A. (2011). “Statement by Mr. António Guterres, United Nations High Commissioner for Refugees, Intergovernmental Meeting at Ministerial Level to mark the 60th anniversary of the 1951 Convention relating to the Status of Refugees and the 50th anniversary of the 1961 Convention on the Reduction of Statelessness”. Geneva. Access Date: 20.02.2020. Available at: <https://www.unhcr.org/admin/hcspeeches/4ecd0cde9/statement-mr-antonio-guterres-united-nations-high-commissioner-refugees.html>

¹¹⁰ Kälén, W. “From the Nansen Principles to the Nansen Initiative. Preventing Displacement”. *FMR* 41, pp. 48-49. Access Date: 18.03.2020. Available at: <https://www.fmreview.org/preventing/kalin>

while making the discussion about the free movement of persons and humanitarian visas.¹¹¹ It simply helped to start a conversation between the States without setting a concrete solution though.

The UN 2030 Agenda for Sustainable Development involves seventeen goals while giving the focus to the crisis like climate change and calls for action to combat its impacts in general. Related to that, States recognized in the UN Sendai Framework for Disaster Risk Reduction, which was adopted in 2015, displacement as one of the most devastating consequences of disasters.¹¹² So, in order to achieve the goals that were set in the UN 2030 Agenda, the focus must be given to climate change-induced migration.

Further, the Global Compact for Safe, Orderly and Regular Migration was born from the Resolution of the United Nations General Assembly, titled the New York Declaration, which was signed in 2016.¹¹³ The Declaration' itself solely mentioned the in-country individuals affected by climate change, while excluding the externally displaced individuals.¹¹⁴ The Compact is a breakthrough since it explicitly gave recognition to climate change-induced displacement and 152 UN Member States made a commitment to address challenges jointly by acknowledging their shared responsibilities.¹¹⁵ Although the Compact is not binding, it brings out the potential of the countries to create a legal instrument on the related issue.¹¹⁶

¹¹¹ Steffens, J. (2019). "Climate Change Refugees in the Time of Sinking Islands". *Vand. J. Transnat'l L.*, 52, pp. 746-747.

¹¹² United Nations General Assembly (2015). *Resolution 70/1. Transforming our world: the 2030 Agenda for Sustainable Development*. A/RES/70/1; United Nations (2015). *Sendai Framework for Disaster Risk Reduction 2015-2030*. Access Date: 19.05.2020. Available at: <https://www.undrr.org/publication/sendai-framework-disaster-risk-reduction-2015-2030>

¹¹³ Oelgemöller, C. & Allinson, K. (2020). "The Responsible Migrant, Reading the Global Compact on Migration". *Law and Critique* 31, p. 186.

¹¹⁴ Kälin, W. (2018). "The Global Compact on Migration: A Ray of Hope for Disaster-Displaced Persons". *International Journal of Refugee Law*, Vol 30, No 4, p. 665.

¹¹⁵ *Ibid.*, p. 664; Aleinikof, T. A. (2018). "The Unfinished Work of the Global Compact on Refugees". *International Journal of Refugee Law*, Vol 30, No 4, p. 615; Chetail, V. (2020). "The Global Compact for Safe, Orderly and Regular Migration: A Kaleidoscope of International Law". *International Journal of Law in Context*, p. 16; UN News (2018). "General Assembly officially adopts roadmap for migrants to improve safety, ease suffering". Access Date: 08.11.2020. Available at: <https://news.un.org/en/story/2018/12/1028941>

¹¹⁶ Oelgemöller, C. & Allinson, K. (2020), p. 186; Newland, K. (2018). "The Global Compact for Safe, Orderly and Regular Migration: An Unlikely Achievement". *International Journal of Refugee Law*, Vol 30, No 4, p. 657.

To date, although climate refugees have been repeatedly underscored as a policy issue with an important effort at the international level, adopting a specific instrument that ensures an integrated response in the sense of human rights protection for climate refugees is still much needed. To sum up, it is clear that the UN bodies and agencies are aware of the elephant in the room. However, what are they actually doing in order to protect it? Over the years, they gained solid knowledge with regard to climate change as a human rights issue and addressed the challenges specifically associated with displacement. The existing actions helped to raise awareness on the issue, but not at the sufficient level on bringing legal recognition and protection.

As a powerful global name, the UN therefore must start to take initiative in the legislative process. It has consistently drafted special human rights framework mechanism for vulnerable groups, such as for refugees through the Convention on the Status of Refugees, for women through the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹¹⁷, for children through the Convention on the Rights of the Child (CRC)¹¹⁸ and for disabled through the Convention on the Rights of Persons with Disabilities (CRPD)¹¹⁹, in order to remove the barriers on enjoying human rights in the same degree with others.¹²⁰ It is time to draft in that framework mechanism a Convention on the Status and Protection of Climate Refugees. We are aware of the fact that the UN has the ability to shed light on the legal status and protection of climate refugees by drafting such convention.

¹¹⁷ United Nations (1979). Convention on the Elimination of All Forms of Discrimination Against Women. UNTS Volume Number 1249.

¹¹⁸ United Nations (1990). Convention on the Rights of the Child. UNTS Volume Number 1577.

¹¹⁹ United Nations (2008). Convention on the Rights of Persons with Disabilities. UNTS Volume Number 2515.

¹²⁰ Mustaniemi-Laakso, M. et al., p. 2.

Chapter III

THE EUROPEAN UNION

1. The Legal Protection Framework of the EU

The protection is related to facilitating an environment that the asylum seekers will enjoy their basic human rights when waiting for a durable solution to the inhuman or degrading treatment or other types of dangers that happened or could have happen in the country of origin. It lies at the heart of human rights and focuses on human dignity. The concept of legal protection means using the legal tools in the sphere of EU law which stipulates the obligations of the Member States and correspondingly the rights of asylum seekers.¹²¹

As aforementioned, human rights and the protection of climate refugees are intertwined with each other and the consequences of climate change will threaten the enjoyment of many rights that are covered under EU law. For this reason, a detailed analysis of EU law, by mainly giving focus to human rights-related legal sources, is needed in order to discover the potential protection mechanism for climate refugees that exist in the EU territory and finding a way to fill the legal and protection gap. Hereinafter, the legal sources of the EU will be scrutinized hierarchically, and then, potential protection mechanisms for climate refugees will be discussed.

1.1. The Protection of Climate Refugees Under EU Law

The EU has an independent legal order both from international law and the laws of the Member States.¹²² According to Article 47 of the Treaty of the European Union (TEU), the EU has an independent and international legal personality, therefore,

¹²¹ Goodwin-Gill, G. S. (2014). "The International Law of Refugee Protection". The Oxford Handbook of Refugee and Forced Migration Studies, p. 37.

¹²² Mohay, Á. (2017). "The status of international agreements concluded by the European Union in the EU legal order". Právni vjesnik: časopis za pravne i društvene znanosti Pravnog fakulteta Sveučilišta JJ Strossmayera u Osijeku, 33(3-4), p. 160.

it can get involved in the international policy area, and can carry rights and enter into responsibilities under international law.¹²³ The EU is a source of law and a part of the legal systems of the Member States since EU law can have direct applicability, direct effect and indirect effect.¹²⁴ In a focus of primary law, international agreements and secondary law, EU law will be analyzed below.

1.1.1. Primary Law

The primary law is at the top of the hierarchy: the EU Treaties, the Charter of Fundamental Rights, general principles of EU law.¹²⁵ The EU law functions are mainly formed by two treaties: The Treaty of the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU)¹²⁶. The TEU is establishing the purposes of the EU and the institutional duty framework of the European Commission, European Parliament, and Council.¹²⁷ The TFEU is establishing the sphere of the EU's legislative power and the legal principles when it is functioning.¹²⁸

As a primary source of EU law, Article 2 and Article 21 of the TEU declare that the EU is built on respecting human rights and its external relations should be guided by that principle universally and undividedly. Article 3(5) TEU reminds the EU of its role and responsibility to protect human rights worldwide. Therefore, the EU must abide by its role and responsibilities in order to respect and protect the human rights of climate refugees.

The TEU also acknowledges the binding effect of the Charter of Fundamental Rights of the EU which enjoy the same legal value as provisions of the EU Treaties.¹²⁹

¹²³ Mohay, Á. (2017), p. 152

¹²⁴ Bux, U. (2020). "Sources and Scope of European Union Law. Fact Sheets on the European Union". Access Date: 01.06.2020. Available at: https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.2.1.pdf

¹²⁵ Karayığit, M. T. (2019). *Avrupa Birliği Anayasa Hukuku*. Seçkin Yayıncılık, p. 45; Rosas, A., & Armati, L. (2018). *EU Constitutional Law: An Introduction*. Bloomsbury Publishing, p. 108.

¹²⁶ Consolidated version of the Treaty on the Functioning of the European Union [2012] Official Journal C 326/47.

¹²⁷ Franklin, J. (2019). "PRIMER: how to make an EU law". Access Date: 04.06.2020. Available at: <https://www.iflr.com/Article/3905602/PRIMER-how-to-make-an-EU-law.html>

¹²⁸ Ibid.

¹²⁹ Article 6, TEU.

Those provisions give a Treaty basis to the EU's policy to integrate human rights protection into its external relations. The Treaties require all Member States to adhere to these values and they include a sanction mechanism for the Member States which seriously and persistently violate such rights.¹³⁰

The Charter has significant importance both by ensuring provisions similar to the ECHR since it used that Convention as guidance and also differing from the ECHR by providing extensive protection in some areas.¹³¹ For instance, while the Charter provides protection regarding the right to healthcare in Article 35 and the right to a healthy environment in Article 37, the ECHR does not. In particular, the right to a healthy environment can be a great tool for climate refugees when claiming rights towards the EU.

1.1.2. International Agreements

International agreements are considered at a different level due to not being in the scope of primary and secondary law.¹³² Three types of international agreements exist in the sphere of EU law which can be distinguished by the drafted parties, such as by the EU, both by the EU and some Member States and by the several Member States.¹³³

International agreements contain human rights in two ways: as a part of a provision in the agreement and as an agreement specifically about human rights matter.¹³⁴ The parties of international human rights agreements have traditionally been

¹³⁰ Craig, P. & de Búrca, G. (2011). *EU Law Text, Cases, and Materials*. Oxford University Press, Fifth Edition, p. 363.

¹³¹ Özkan, I. (2011). "Avrupa İnsan Hakları Mahkemesi ve Avrupa Birliği Adalet Divanı Kararları Işığında Avrupa Birliği'nin Göç ve Sığınma Politikası". *Ankara Barosu Dergisi*, (1), p. 187; Halberstam, D. (2016). "Opinion 2/13 of the Court (CJEU)". *International Legal Materials*, 55(2), p. 267.

¹³² EUR-Lex. "European Union (EU) Hierarchy of Norms". Access Date: 01.06.2020. Available at: https://eur-lex.europa.eu/summary/glossary/norms_hierarchy.html

¹³³ Rosas, A. (2011). "The Status in EU Law of International Agreements Concluded by EU Member States". *Fordham International Law Journal* Volume 34, Issue 5, pp. 1305-1306.

¹³⁴ Nakanishi, Y. (2018). *Contemporary Issues in Human Rights Law: Europe and Asia*. Springer Nature, p. 12.

the States.¹³⁵ For this reason, the EU never became a party in an international human rights agreement until the ratification of the UN Convention on the Rights of Persons with Disabilities in 2010.¹³⁶ This characteristic practical limitation of the international human rights agreements is making it hard to examine the rights of climate refugees in light of EU law.

However, as aforementioned, as an international human rights agreement the ECHR has its special spot in the evolvement of EU human rights law as guiding the creation of the Charter's provisions and the CJEU's case law. Furthermore, the EU is in the process of accession to the ECHR in light of Article 6(2) TEU, which the Convention will be formally binding on the EU as a member.¹³⁷ There are several articles on that Convention that stipulates protection for asylum seekers and might provide the same level of protection for climate refugees.

Therefore, the principle of non-refoulement stipulated in Article 2 (right to life) and Article 3 (prohibition of torture, inhuman or degrading treatment or punishment) of the ECHR may help fill some protection gap the legal protection of climate refugees. Because States have liability regarding not sending those individuals who would face a real threat contrary to those provisions. According to Article 15(2) of the ECHR, there is no exception for the limiting or ignoring the protection recognized by those articles. Also, according to Article 4 of Fourth Protocol to the ECHR, States cannot expel those individuals collectively.

¹³⁵ Neubauer, V. (2011). *How Could the Convention On the Elimination of All Forms of Discrimination Against Women (CEDAW) Be Implemented in the EU Legal Framework?* Directorate General For Internal Policies Policy Department C: Citizens' Rights and Constitutional Affairs Gender Equality. Brussels: European Parliament, p. 18.

¹³⁶ Neubauer, V. (2011), p. 18.

¹³⁷ See also, Halberstam, D. (2016): *[T]he idea of accession goes back to 1974, when the European Commission for the first time introduced the idea of the EU acceding to the ECHR, with the creation of the EU in 1992, efforts to join the ECtHR regime became more concrete, led the Council of the EU to request for a legal opinion from the CJEU. In its Opinion 2/94, the Court insisted that the Treaties lacked an appropriate legal basis for accession. With the Lisbon Treaty, accession is provided for in Article 6(2) TEU.*

1.1.3. Secondary Law

Secondary law comprises all the acts adopted by the EU institutions which enable the EU to exercise its powers.¹³⁸ It involves five acts which are regulations, directives, decisions, recommendations and opinions.¹³⁹ While the secondary law is behind in the overall hierarchy, the place of these five acts within the overall hierarchy will depend upon whether they are legislative, delegated or implementing acts.¹⁴⁰ Article 288 of the TFEU specified that while regulations, directives and decisions are binding, recommendations and opinions are not binding. Furthermore, regulation is fully binding and directly applicable for every Member States, a directive is binding as to the end to be procured by the directed Member States, and a decision is fully binding for the specific addressee.

There are two important directives that framed the legal protection and status for asylum seekers in the EU:

1.1.3.1. Qualification Directive

On one side, *Qualification Directive 2011/95/EU*¹⁴¹ established provisions for applicants to apply for refugee status or subsidiary protection and specifies the rights granted to applicants of such status while encouraging Member States of the EU to establish or maintain more favorable conditions than those stipulated in its provisions.¹⁴²

¹³⁸ EUR-Lex. "European Union (EU) Hierachy of Norms". Access Date: 01.06.2020. Available at: https://eur-lex.europa.eu/summary/glossary/norms_hierarchy.html

¹³⁹ EUR-Lex. "European Union (EU) Hierachy of Norms". Access Date: 01.06.2020. Available at: https://eur-lex.europa.eu/summary/glossary/norms_hierarchy.html

¹⁴⁰ Craig, P. & de Búrca, G. (2011), p. 104.

¹⁴¹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), [2011], OJ L. 337/9-337/26.

¹⁴² Directorate-General for Migration and Home Affairs (2018). "Refugees and stateless persons - common standards for qualification". Access Date: 05.05.2020. Available at: <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32011L0095>

The scope of the Qualification Directive is limited to individuals in need of international protection, which excludes climate refugees in general if they do not need protection against conflict triggered by climate change-induced disasters. The main reason is that it is expressly based on the 1951 Refugee Convention which was outdated. And, expanding the scope of this directive will not be smooth and practical since it requires actions both at the EU and national levels. Therefore, a regulation must be adopted for the creation of the common asylum system that will be applicable across the EU. Because regulations are directly applicable in the Member States when a directive will allow the adoption of different measures at the national level since it is not directly applicable.

To make it clear, the implementation and interpretation of the amended directive when seeking protection can differ between the Member States. For this reason, amending and broadening the scope of a directive would not be a general solution at the EU level. Because it might not guarantee for climate refugees to be granted the protection for the same reasons and the individuals may not get access to the same level rights across the EU. This can be seen more comprehensively on the European Commission's report "*Evaluation of the application of the recast Qualification Directive (2011/95/EU)*".¹⁴³

The report specifically searched the different implementation of the provisions of the Qualification Directive.¹⁴⁴ The study indicated the statements of the Member States regarding the non-transposition of some provisions into their national law.¹⁴⁵ Also, added that for some provisions the Member States used different wording in national law which resulted in different assessments while granting protection.¹⁴⁶ Overall, those actions affected the credibility and quality of the Directive for the individuals who suffered from similar persecution in their country of origin. In the end,

¹⁴³ The European Commission (2019). *Evaluation of the application of the recast Qualification Directive (2011/95/EU), Final Report*. Luxembourg: Publications Office of the European Union.

¹⁴⁴ *Ibid.*, p. 7.

¹⁴⁵ *Ibid.*, p. 12.

¹⁴⁶ *Ibid.*, p. 13.

the fact that the individuals who need protection were assessed in different ways by the Member States made the protection mechanism uncertain and unstable.

With that being said, the Commission already proposed in 2016 regarding changing the act type of Qualification Directive into the Qualification Regulation for the purpose of avoiding breaches made by the Member States on the transposition of EU law and providing a same degree protection across the EU.¹⁴⁷ The Commission, on a New Pact on Migration and Asylum in September 2020, reiterated that proposal and also made five new proposals for adopting new regulations for improving EU's legislative framework on migration and asylum.¹⁴⁸

1.1.3.2. Temporary Protection Directive

On the other side, *Temporary Protection Directive 2001/55/EC*¹⁴⁹ laid down a unique mechanism that allows for immediate and temporary protection for internationally displaced populations that unable to return to their country of origin, and this collective protection will be used when there is a risk that the international protection mechanism will struggle to cope with the mass influx.¹⁵⁰

In light of Article 2 (ii) of Temporary Protection, displacement occurred by climate change-induced disasters can be considered as a serious risk or systematic or generalized violations of human rights.¹⁵¹ However, this protection mechanism is simply nonfunctional since it has never been used due to requiring a Council decision

¹⁴⁷ The European Commission (2016b). Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. Brussels, COM(2016), 466 final, 2016/0223 (COD), pp. 4-6.

¹⁴⁸ The European Commission (2020b). Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU)XXX/XXX [Asylum and Migration Fund]. Brussels, SWD(2020), 207 final {COM(2020) 610 final}, pp. 65-66.

¹⁴⁹ Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof [2001], OJ L.212/12-212/23.

¹⁵⁰ EUR-Lex (2012). "Temporary protection if there is a mass influx of displaced people". Access Date: 05.05.2020. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:i33124&from=EN>

¹⁵¹ Kraler, A., Noack, M., & Cernei, T. (2012), p. 9.

with a qualified majority.¹⁵² Also, this directive focuses on the return and can only be benefited from this status for one year (extended by up to two years) which limits the protection for the more disastrous situations. For instance, this protection mechanism will be useless in the case of sea-level rise and submergence of a country, since the impact of this disaster cannot be fixed through time let alone in a year.

Consequently, on a New Pact on Migration and Asylum in September 2020, the Commission proposed that this Directive must be cancelled since it has procedural inefficiency and could not answer the current needs.¹⁵³ It is clear to say that this Directive does not have a future in the EU asylum system and therefore cannot be a useful tool for protecting climate refugees.

2. The Policy of the EU on Migration and Asylum

Managing the possible climate change-induced migratory flows to the EU in the near future continues to invoke legal and protection concerns with regard to the status of climate refugees as asylum seekers. As there are drawbacks on current types of protection, the implementation of the existing law by the Member States and the EU's stance on the asylum policies and procedures needed to be explored before recommending actions that must be taken. In this way, for creating an efficient legislative framework, lessons will be learned from the mistakes and negligence that were made with the existing legislation.

Granting legal protection occurs under the Member States' sovereignty. The Member States can decide who can enter and stay in their territories and who should return to their country.¹⁵⁴ However, this power must be exercised within and according to EU law.¹⁵⁵ In this context, the related EU law must be reviewed.

¹⁵² Kraler, A., Cernei, T., & Noack, M. (2011), p. 55.

¹⁵³ The European Commission (2020b), SWD(2020), 207 final, COM(2020) 610 final, pp. 13-14, 64.

¹⁵⁴ Goodwin-Gill, G. S. (2014), p. 36.

¹⁵⁵ Ibid.

The EU has the CEAS, since it sustains open borders policy between its Member States. The CEAS policy framework is mainly created by the revised Asylum Procedures Directive,¹⁵⁶ the revised Reception Conditions Directive,¹⁵⁷ the revised Qualification Directive, the revised Dublin Regulation and the revised EURODAC Regulation.¹⁵⁸ Thus, to understand the policies of the EU, in light of their core legal basis, the asylum procedure and the application of EU law by the Member States will be presented below.

2.1. The Asylum Procedure in the EU and the Obligations of the Member States

The Member States of the EU have a common asylum application procedure. First of all, to specify the responsible country for the examination of the asylum application, the collected fingerprints will be shared at the EURODAC system.¹⁵⁹ The examining country must respect their fundamental rights throughout the whole process, e.g. essential needs such as food and a place to stay must be provided to the applicants and the administrative detention should only be used when there is no other option left.¹⁶⁰ In order to determine to grant refugee status or not, an interview will be made with a caseworker: If refugee status is recognized, the important rights that can be granted mainly are protection from refoulement (Article 21), access to employment (Article 26), access to education (Article 27), social welfare (Article 29), healthcare (Article 30), access to accommodation (Article 32) and access to integration facilities

¹⁵⁶ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), [2013], OJ L 180/60–95.

¹⁵⁷ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), [2013], OJ L 180/ 96–116.

¹⁵⁸ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security, and justice (recast), [2013], OJ L. 180/1-180/30.

¹⁵⁹ The European Commission (2014). "A Common European Asylum System". Luxembourg: Publications Office of the European Union, p. 4. Access Date: 09.05.2020. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/ceas-fact-sheets/ceas_factsheet_en.pdf

¹⁶⁰ Ibid.

(Article 34) with the precise focus on vulnerable groups (Article 20).¹⁶¹ If refugee status is not recognized, the applicant can appeal the first instance decision and the rejection ends as deportation.¹⁶²

Since some asylum seekers are highly vulnerable comparing to others, throughout the whole process, those vulnerable groups are being specifically protected with an additional effort in light of relevant legal framework. When examining the asylum application, the Member States must do a vulnerability assessment within a reasonable time while considering the certain scenario such as children (whether unaccompanied or not), elderlies, disables, either physically or mentally ill patients, pregnant, single parents, human smuggling victims and survivors of torture, rape or other types of violence.¹⁶³

As demonstrated above, the Member States have both positive and negative obligations, that arise from the EU asylum legislative framework, to care and take action for the asylum seekers and most specifically for the vulnerable groups during the asylum procedure. As a negative obligation to the Member States, human rights law encompasses the principle of non-refoulment with particular importance to asylum seekers. Various international human rights instruments covered that principle, including Article 33 of the 1951 Refugee Convention, Article 3 of the ECHR, Article 7 of the ICCPR and Article 3 of the United Nations Convention Against Torture¹⁶⁴.

The principle of non-refoulment prohibits individuals from being deported to where there are substantial grounds for assuming that it will pose a significant risk of persecution, inhuman or degrading treatment or penalty or arbitrary deprivation of life.¹⁶⁵ This principle, which is not only in the scope of the international customary law

¹⁶¹ The European Commission (2014). "A Common European Asylum System". Luxembourg: Publications Office of the European Union, p. 4. Access Date: 09.05.2020. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/ceas-fact-sheets/ceas_factsheet_en.pdf

¹⁶² Ibid.

¹⁶³ Articles 21 and 22 of the revised Reception Conditions Directive; Article 20 of the the revised Qualification Directive.

¹⁶⁴ United Nations (1987). Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. UNTS Volume Number 1465.

¹⁶⁵ Rouleau-Dick, M. (2018), p. 14.

but also a peremptory norm that obliges governments to protect asylum seekers, has no exception.¹⁶⁶

The specific question to be raised is whether the deportation of a person to the country of origin that has been affected by climate change-induced disasters creates the possibility of inhuman or degrading treatment. Although the principle of non-refoulement has not yet been applied simply to climate change-induced displacement situations, through several cases the ECtHR has broadened the definition of certain rights to suggest extraterritorial duties on the Contracting States of the ECHR, primarily by Article 3 of the ECHR. As the ECtHR judgments can be seen as a source of inspiration within the scope of EU law, several inspiring judgments of the ECtHR will be scrutinized below.

The ECtHR by interpreting a comprehensive and strict interpretation of the principle of non-refoulement in Article 3 in the *Soering v. United Kingdom* case stated that States' responsibility will occur when there is a solid reason on facing with a real risk if deported.¹⁶⁷ Since then it has been reiterated in various instances. In this sense, the most relevant case would certainly be *MSS v. Belgium and Greece* in which the ECtHR found a breach relying on the applicant's deportation by Greece where the living conditions constitute treatment prohibited under Article 3 of the ECHR and added that asylum seekers particularly belong to the underprivileged vulnerable groups.¹⁶⁸ Furthermore, the ECtHR also has found in *Jalloh v. Germany* case that feelings of fear and anguish may amount to inhuman or degrading treatment.¹⁶⁹

It is conceivable that climate refugees will fall within the scope of protection of Article 3 of the ECHR which is associated with Member States' liability on non-refoulement and elimination of potential breaches of human rights triggered by deportations. Therefore, the principle of non-refoulement may help fill some protection gap in which climate refugees are likely to fall due to the lack of legal recognition.

¹⁶⁶ Rouleau-Dick, M. (2018), p. 14; Tripathi, S. (2018), p. 30.

¹⁶⁷ *Soering v. United Kingdom* [1989] ECtHR, Application No. 14038/88, paras. 88-91.

¹⁶⁸ *M.S.S. v. Belgium and Greece* [2011] ECtHR, Application No. 30696/09, paras. 251, 362.

¹⁶⁹ *Jalloh v. Germany* [2006] ECtHR [Grand Chamber], Application No. 58410/00, p. 15, paras. 82-83.

However, this does not mean that the principle is granting legal recognition or relevant protection since it only gives a negative obligation not to deport.¹⁷⁰

As aforementioned, the ECHR and the ECtHR judgments have special spots in EU human rights law and human rights case law can inspire the EU on taking action for the climate refugees. Once the process of accession to the ECHR will conclude, the EU directly as a member will have to abide by the obligations arising from the ECtHR, and if the rights of climate refugees get violated, the EU will have to pay the consequences before the ECtHR. In addition to that, the EU's credibility in regard to human rights and asylum policy can get damaged due to negligence for an issue that is foreseeable.

2.2. The Application of EU Law

As part of human rights law, the EU's asylum law is powerful on theory but ineffective on distribution, because the 1951 Refugee Convention and its 1967 Additional Protocol only necessitate the Member States to examine applications of asylum, whilst also allowing them to decide on granting with the status or not in light of their perception of acknowledgments of required criteria for refugee status at the time.¹⁷¹ In practice, management of the assessment procedures allows the asylum policy to be adjusted with the complexity of economic and diplomatic interests, as a result, the numbers and categories of asylum seekers permitted to enter their territories are significantly controlled by the many Member States.¹⁷² So simply, the right to asylum is intertwined with the discretion of the Member States during the assessment procedure, which paves the way for restricting people's movement on cross border.

The recent political instability of the Middle East, specifically the unrest in Syria, Iraq and Libya, resulted in a massive increase in asylum applications in the EU, which projected the unwillingness of Member States to welcome refugees, and previous

¹⁷⁰ Rouleau-Dick, M. (2018), p. 17.

¹⁷¹ Reynaud, S. (2017), pp. 21-22; McAdam, J. (2008). *The Refugee Convention as a Rights Blueprint for Persons in Need of International Protection*. In J. McAdam (Ed.). *Forced Migration, Human Rights and Security*, London: Hart Publishing, p. 267.

¹⁷² Reynaud, S. (2017), p. 22.

humanitarian asylum policy thus turned into security-focused one. Member States' interests on protection from massive migration flow prevail over basic human rights of individuals.¹⁷³ This can be seen in the number of asylum applications in the last decade. Throughout 2008-2012, there was a steady rise in the number of applications for asylum within the EU, during 2013-2015 the number increased at a rapid rate and in 2015 peaked at about 1.3 million. Since 2015, the number slowed and in 2017 reflected a major drop of 44.5 percent compared to 2016 and maintained a decline till 2019 too. In 2019, it increased 11.2 percent compared to 2018, the first time since 2015 the number of asylum applications has grown year-to-year.¹⁷⁴

To simplify, as a result of both allowing sovereignty on the assessment of applications for asylum and the decreased number of asylum applications, the disputes among the Member States have risen as well as a lack of cooperation has grown within the EU, to the point that certain Member States have failed to fulfill their responsibilities under the EU legislative framework.¹⁷⁵ This can be noticed at the current number of granted protection throughout the Member States. In 2019, 38.1% of EU first-instance asylum decisions resulted in positive outcomes and individuals have been granted refugee status (109,000), subsidiary protection status (52,000) and permission to stay on humanitarian grounds (45,100). Of the EU Member States, the greatest percentage of the positive first-instance decisions were given by Spain (66.2%), Luxembourg (56.7%), Austria (53.5%), Greece (53.1%), Ireland (52.1%) and Denmark (52.0%) respectively, in comparison to Italy (19.7%) and Hungary (8.5%).¹⁷⁶

Moreover, under the Dublin Regulation (Regulation No. 604/2013) the applicant's country of entry is responsible for examining asylum applications.¹⁷⁷ The existing migratory routes indicate that the responsibility of coping with the massive

¹⁷³ Reynaud, S. (2017), pp. 22-23; Verdier-Jouclas, M. C. (2019), pp. 9-10, para. 34.

¹⁷⁴ Eurostat (2020). "Asylum statistics - Statistics Explained". Access Date: 25.04.2020. Available at: https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#Number_of_asylum_applicants:_increase_in_2019

¹⁷⁵ Verdier-Jouclas, M. C. (2019), p. 10, paras. 35, 37.

¹⁷⁶ Eurostat (2020).

¹⁷⁷ Article 7, Regulation (EU) No 604/2013 the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) [2013] OJ L. 180/31-180/59.

amount of asylum applications can only be tackled to a considerable extent by the Member States bordering the Mediterranean (Greece, Malta, Italy, and Spain) which that is contradictory to the principle of solidarity.¹⁷⁸

In addition to all the above, the resettlement procedure can be a permanent solution for asylum seekers. It can bring international awareness to those protection problems while waking solidarity across the world. Also, resettlement could enable asylum seekers to arrive in Europe through legal and safer ways to protect them from needing to resort to illegal trafficking channels and endangering their lives on risky unconventional routes. However, only a handful of Member States consider resettlement as an option. The Member States' unwillingness and weak efforts to participate can be seen explicitly at the low number of resettled individuals.¹⁷⁹ Moreover, the priorities of the UNHCR limit the scope of resettlement to almost solely for vulnerable groups noticeably by age, gender and disability within the refugees.¹⁸⁰ Therefore, resettlement cannot be a solution for all.

As demonstrated above, nowadays asylum seekers experience difficulties attributable to the Member States' policies, even though the efficient implementation of relevant legislative framework and solidarity among the Member States for the "standard" refugees would usually safeguard those individuals' rights. By comparison, even though there is no doubt that in the near future there will be a massive increase in migration due to climate change and still, the status of climate refugees remains unclear both legally and politically, despite the critical importance in the sphere of human rights.¹⁸¹ As one can see, the EU's current asylum policies could pose another burden on

¹⁷⁸ Garcés-Masareñas, B. (2015). "Why Dublin 'doesn't work'". Notes internacionales CIDOB 135, pp. 2-3; Verdier-Jouclas, M. C. (2019), p. 10, paras. 38-39.

¹⁷⁹ Eurostat (2019). "Resettled persons - annual data – persons". Access Date: 21.04.2020. Available at: <https://ec.europa.eu/eurostat/tgm/table.do?tab=table&plugin=1&language=en&pcode=tps00195>; Kraler, A., Noack, M., & Cernei, T. (2012), pp. 11-12; The European Commission (2017). "Resettlement: Ensuring Safe and Legal Access to Protection for Refugees". Access Date: 05.04.2020. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20171114_resettlement_ensuring_safe_and_legal_access_to_protection_for_refugees_en.pdf

¹⁸⁰ Mouzourakis, M. & Pollet, K. & Fierens, R. (2017). *The concept of vulnerability in European asylum procedures*. ECRE, pp. 9-10.

¹⁸¹ Kälin, W. (2012), p. 89.

climate refugees since it is already difficult to seek asylum for the individuals that could fit the “standard” refugee status.

For the above-mentioned reasons, to be able to seek asylum in dignity, in addition to a clear legal framework and policies the change in the stance of Member States is also needed. However, the latest proposals of the Commission on a New Pact on Migration and Asylum in September 2020 showed that even though the EU is aware of the deficiencies, it still solely wants to protect itself and the Member States rather than the individuals who need effective human rights protection. Although the border countries did not abide by EU law, the EU recently focuses on protecting them by removing Dublin Regulation,¹⁸² proposing new regulations¹⁸³ and offering money to the other Member States for the relocation of asylum seekers as if it is a transactional matter.¹⁸⁴

3. The International Responsibility of the EU

The Climate Vulnerability Index rated 193 countries on their perceived risk from climate change by assessing the physical impacts of climate change, the vulnerability of citizens and the level of adaptability of the countries. While twenty-seven European countries are classified as low-risk which in total thirty-six countries were in this category, the Sub-Saharan Africa region is home to ten of the most vulnerable countries and the total population of those countries is expected to double by 2050.¹⁸⁵

John Wilmoth, director of the United Nations Population Division (UNPD) since 2013, calls for action to support people in developing countries for strengthening their economies and communities as rapidly as possible while reminding that they are

¹⁸² The European Commission (2020b), SWD(2020), 207 final, COM(2020) 610 final, p. 69.

¹⁸³ Ibid., p. 70.

¹⁸⁴ Ibid., p. 77.

¹⁸⁵ Nugent, C. (2019). “The 10 Countries Most Vulnerable to Climate Change Will Experience Population Booms in the Coming Decades”. Access Date: 25.03.2020. Available at: <https://time.com/5621885/climate-change-population-growth/>

not the ones that have created the challenges caused by climate change.¹⁸⁶ The World Bank supports this assumption in its report written in 2014 while indicating the average metric tons of CO₂ produced both by European (6.4) and Sub-Saharan African (0.8).¹⁸⁷ The numbers simply indicate that the EU Member States breaches the no-harm principle of international environmental law since climate change-induced effects aggravated mainly by their actions.¹⁸⁸ As the common but differentiated responsibility principle acknowledges that although climate change is a collective concern, developed countries are responsible for taking leadership in global efforts to minimize and combat climate change.¹⁸⁹ This principle made its spot in the UNFCCC which the EU and its Member States are also the parties.¹⁹⁰ It encourages international cooperation in terms of guaranteeing the human rights of displaced individuals and taking action for mitigating climate change.¹⁹¹

Given individuals in developing countries affected by climate change prefer to live near to their region, it is visible at that moment there is a large rise in the number of IDPs instead of the number of climate refugees. However, there is a serious likelihood that today's IDPs could become tomorrow's asylum seekers if climate change-induced deterioration continues to advance. And in the near future, some might choose to seek a way to move to the EU as a way of protecting themselves against deteriorating climate change-induced conditions in-country.¹⁹² Consequently, the EU and its Member States have a responsibility to provide protection for those who ultimately manage to enter into the EU borders.¹⁹³

Combined with the rapid population growth in the more vulnerable regions, the imbalance between different countries on experiences and resiliency for climate change

¹⁸⁶ Nugent, C. (2019).

¹⁸⁷ The World Bank. "CO₂ emissions (metric tons per capita)". Access Date: 21.04.2020. Available at: <https://data.worldbank.org/indicator/EN.ATM.CO2E.PC>

¹⁸⁸ United Nations General Assembly (2012). Human Rights of Migrants: Note by the Secretary-General. A/67/299, pp. 19-20, para. 80.

¹⁸⁹ Ekşi, N. (2016), p. 54; Werz, M., & Hoffman, M. (2016), p. 148; The European Commission (2013), SWD(2013) 138 final, p. 16.

¹⁹⁰ Articles 3(1) and 4 of the UNFCCC.

¹⁹¹ United Nations General Assembly (2012), A/67/299, pp. 19-20, paras. 80-81.

¹⁹² Edwards, A., & Ferstman, C. (Eds.). (2010). *Human security and non-citizens: law, policy and international affairs*. Cambridge University Press, p. 42.

¹⁹³ Ammer, M., Mayrhofer, M., Randall, A., & Salsbury, J. (2014), p. 32.

could lead to humanitarian crises en route to migration flow.¹⁹⁴ The EU positions in such an incredibly difficult angle as a region that has a growing climate change-induced immigration propensity and it solely has the Mediterranean as a bridge for migration between Sub-Saharan Africa, North Africa and the Middle East for throughout the years.¹⁹⁵ The studies support the theory that somehow the crisis in the Middle East and some African regions were stemmed from climate change. The ongoing refugee crisis in the EU also demonstrates the consequences of failure and unpreparedness in general.¹⁹⁶ Therefore, the EU can prevent the damages that will be born by the inaction in the sphere of climate change-induced migration if it acknowledges its international responsibility.¹⁹⁷

As aforementioned, the EU has not any comprehensive and solid policies and legislative framework for climate change-induced migration, even though the topic made its spot at the EU level on several occasions by various institutions of the EU, such as the European Commission mentioned it as a continuing problem.¹⁹⁸ Safeguarding the climate refugees will remain problematic through the lack of a legal instrument that specifically identifies the rights and responsibilities of the Member States.¹⁹⁹ Therefore, since the EU Member States are inherently less vulnerable to the impacts of climate change and more capable to cope with its challenges, policy-makers and legislative authorities of the EU must put this on the agenda, since in light of its underlying values climate refugees cannot be ignored.²⁰⁰ As its Member States are the major producers of CO₂, it is essential for the EU to be conscious of its responsibilities and should minimize the damage caused to the other regions/and countries of the earth.²⁰¹

¹⁹⁴ Nugent, C. (2019).

¹⁹⁵ Werz, M., & Hoffman, M. (2016), p. 148; Magnan, A., Garnaud, B., Billé, R., Gemenne, F., & Hallegatte, S. (2009), pp. 26-27.

¹⁹⁶ Reynaud, S. (2017), p. 44.

¹⁹⁷ United Nations General Assembly (2012), A/67/299, p. 17, para. 69.

¹⁹⁸ Kraler, A., Cernei, T., & Noack, M. (2011), pp. 22-23; Ammer, M., Mayrhofer, M., Randall, A., & Salisbury, J. (2014), p. 24.

¹⁹⁹ Flavell, A. (2014), p. 27.

²⁰⁰ Sgro, A. (2008). "Towards recognition of environmental refugees by the European Union". *REVUE Asylon* (s), (6). Access Date: 16.06.2020. Available at: <https://www.reseau-terra.eu/article844.html>; Sgro, A. (2009), p. 76; Ammer, M., Mayrhofer, M., Randall, A., & Salisbury, J. (2014), p. 10.

²⁰¹ Ammer, M., Mayrhofer, M., Randall, A., & Salisbury, J. (2014), p. 9; See also, Global Footprint Network. Access Date: 21.01.2020. Available at: <https://data.footprintnetwork.org/#/?/>

In conclusion, the EU must acknowledge that seeking asylum is human rights and Member States have a responsibility to provide them the enjoyment of this right without considering those vulnerable individuals as a burden.²⁰² The main objective must be addressing the cause of displacement rather than putting barriers to prevent the influx.²⁰³ Since the conduct of the EU Member States caused climate change and breached the principle "not to create refugee", they must be a part of the solution once climate change-induced displacement emerges.²⁰⁴

²⁰² United Nations General Assembly (2016). Human Rights of Migrants: Note by the Secretary-General. A/71/285, p. 8, para. 34.

²⁰³ United Nations General Assembly (2017). Report of the Special Rapporteur on the Human Rights of Migrants on a 2035 Agenda for Facilitating Human Mobility. A/HRC/35/25, p. 7, paras. 29-30.

²⁰⁴ Goodwin-Gill, G. S. & McAdam, J. (2007). *The Refugee in International Law*. Oxford University Press, p. 2.

CHAPTER IV

ACTIONS TO BE TAKEN

In academia, various suggestions were made in regard to the legal status and protection of climate refugees. Firstly, at the EU level, suggestions were around the amendment of Article 15(c) of the Qualification Directive while including the environmental disasters, using the Temporary Protection Directive during a mass influx and also considering resettlement as an option.²⁰⁵ Secondly, at the regional level, initiating an additional protocol to the ECHR to include the right to a healthy environment for protecting climate refugees were considered.²⁰⁶ Thirdly, at the international level, amending the 1951 Refugee Convention to include climate change as persecution or drafting an international agreement regarding the protection of climate refugees was discussed.²⁰⁷ Lastly, in addition to all, voluntary relocation and financially supporting the mainly effected developing countries were suggested in order to minimize the externally displaced person number.²⁰⁸ Overall, the general standing is that the international community and specifically the developed countries are responsible, so they must find a solution too. However, until now, no concrete steps are taken at any level regarding the above-mentioned suggestions.

What could be concretely made by the EU both at the regional and international level for the effective legal protection of those refugees need to be analysed in detail in the following section.

²⁰⁵ Kraler, A., Cernei, T., & Noack, M. (2011), p. 74.

²⁰⁶ Parliamentary Assembly (2009). Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment. Recommendation 1885; Parliamentary Assembly (2003). Environment and human rights. Recommendation 1614; Parliamentary Assembly (1999). Future action to be taken by the Council of Europe in the field of environment protection. Recommendation 1431.

²⁰⁷ Ekşi, N. (2016), pp. 42-43; Tekin, E. (2020). "Uluslararası Hukuk Bağlamında İklim Mültecilerinin Korunması Sorunu". TBB Dergisi 2020 (147), pp. 323, 326.

²⁰⁸ Tekin, E. (2020), p. 325.

1. What Can the EU Do?

There are so many things that the EU can do as a powerful actor in the international, regional and national areas. In order to use its power, the EU first of all must learn from its mistakes. For this reason, at first, the mistakes especially on prevention mechanisms that were made during COVID-19 outbreak, which is a current sudden-onset disaster, must be highlighted. Secondly, the EU must look at national-level action related to climate change-induced displacement and climate refugees in order to develop its common asylum policy framework. Thirdly, an additional protocol that covers the right to a healthy environment should be drafted in the ECHR for providing an effective human rights protection mechanism to climate refugees across the Contracting Parties, in particular the EU Member States. Fourthly, the EU should use its international legal status for concluding an international agreement with the UN, since it is a way that is more practical, efficient and comprehensive than legislating legal acts. However, if that is not possible, adopting a legislative act and particularly a regulation can be effective in filling the gap as well. Lastly, the EU should improve its human rights standards and implementation in regard to asylum seekers, since it keeps failing even on protecting “standard” refugees let alone climate refugees. Therefore, those recommendations will be discussed below in a more detailed way.

1.1. To Learn From COVID-19

The resemblance of climate change and COVID-19 is undeniable. Climate change can appear as a sudden-onset disaster just like COVID-19. In addition to that, climate change can cause the born of many infectious diseases by the rising temperatures of the earth's and effecting both the biodiversity and water resources.²⁰⁹ For this reason, the current situation of the world can give great lessons on prevention and mitigation of sudden-onset disasters, adaptation abilities of the countries, providing

²⁰⁹ UN Environment (2019), p. 8; Demirci, K. (2019). "Uluslararası ve Ulusal Mevzuat Hükümleri Çerçevesinde İklim Mültecisi Kavramı ve Türkiye Özelinde Yaratacağı Muhtemel Sorunlar". Türkiye Siyaset Bilimi Dergisi, Cilt: 2, Sayı: 2, p. 106; WHO. "Climate change and human health - risks and responses. Summary". Access Date: 19.05.2020. Available at: <https://www.who.int/globalchange/summary/en/index5.html>

protection for individuals and presenting access to fundamental needs without discriminating.

As can be seen through the current sudden-onset disaster, the countries are codependent on each other and one's vulnerability shows and affect the other's future. Because, disasters do not discriminate even though it will affect all in different angles and severity via the ability of prevention, mitigation and adaptation. States, including with powerful and functional health services ones, have been affected by COVID-19 and the pandemic has closed down the economies around the world in months, forced nearly every single person to do self-quarantine in order to protect him/herself and others. The reason for this is that they did not take into account the most important step: prevention.

Every aspect of our lives has been affected by COVID-19, but mainly psychological and mental health, safety and economy, which that's exactly what climate change threatens, too.²¹⁰ In simply, the health of both humans and earth is intertwined with each other and the exposure of the States' weak structural capacity showed us their inability to cope with sudden-onset disasters.

Another important thing COVID-19 especially showed is that a disaster can double the burden for the most vulnerable since they will most certainly be kept getting ignored. The individuals that have lower income became jobless and desperately needed financial aid for their rent, water and electricity bill, access to food. Doing self-quarantine at home did not mean safety for women and children if they had to stay with their abusers, which in the end their basic human rights became in conflict. Emerging data show that violence against women has increased during the quarantine.²¹¹ Furthermore, closing schools and turning to online education became a barrier to access

²¹⁰ Chassagne, N. (2020). "Here's what the coronavirus pandemic can teach us about tackling climate change". Access Date: 05.04.2020. Available at: <https://theconversation.com/heres-what-the-coronavirus-pandemic-can-teach-us-about-tackling-climate-change-134399>

²¹¹ United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) (2020). *COVID-19 and Ending Violence Against Women and Girls. EVAW COVID-19 briefs*. Access Date: 19.05.2020. Available at: <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/issue-brief-covid-19-and-ending-violence-against-women-and-girls-en.pdf?la=en&vs=5006>

to education for the children that could not afford to cell phone, computer, tv and internet. In addition to these factors, the refugees and IDPs that reside in overcrowded and unhygienic camps became the most vulnerable during this global crisis.

However, COVID-19 impacts are likely to be temporary and can be reversible, while this will not be the case in climate change-induced disasters given that it will be mostly permanent and irreversible.²¹² While there is still a time to change and decrease the harm of climate change, the mistakes made during the pandemic of COVID-19 should give a call and teach some lessons to the States, institutions, international organizations and the individuals.

First of all, disasters know no border and will affect every country on earth no matter how far away they have been situated.²¹³ Second of all, it affects everyone in a different level, however, reducing its disastrous effect can be achieved mostly by caring for the most vulnerable groups.²¹⁴ Third of all, it exceeds individual-level and requires collective solid actions internationally and nationally.²¹⁵ Lastly, prevention, which requires early actions that address challenges, is the key because it is easier, cheaper and safer than providing protection. Because, when massive migration flow occurs due to climate change, the best way to handle is not being caught without safeguard but to have an existing and efficient policy framework.

1.2. To Explore the Good Examples from the Member States

Although currently there is not any legislation explicitly covering protection for climate refugees at the EU level, some Member States do have some kinds of protection at the national level that address cases where individuals are unable to return to their country due to environmental disasters, which can be a prototype for the EU.²¹⁶

²¹² Chassagne, N. (2020); Vetter, D. (2020). "How Coronavirus Could Help Us Fight Climate Change: Lessons From The Pandemic". Access Date: 05.04.2020. Available at: <https://www.forbes.com/sites/davidrvetter/2020/03/30/how-coronavirus-could-help-us-fight-climate-change-lessons-from-the-pandemic/#488e0a1a5abc>

²¹³ Figueres, C. (2020). "5 Lessons From Coronavirus That Will Help Us Tackle Climate Change". Access Date: 15.04.2020. Available at: <https://time.com/5808809/coronavirus-climate-action/>

²¹⁴ Ibid.

²¹⁵ Vetter, D. (2020).

²¹⁶ Kraler, A., Noack, M., & Cernei, T. (2012), p. 9.

In particular, four Member States provided protection in the event of environmental disasters and demonstrated inclusiveness in their asylum policies:

i. In Finland, Section 88a (323/2009) of the Aliens Act²¹⁷ stipulates that an individual can be eligible for humanitarian protection received with a residence permit if the return to the country of origin is impossible due to an environmental disaster. Furthermore, Section 109(1) stipulates that an individual in need of international protection can be eligible for temporary protection if safely return to the country of origin is impossible due to environmental disaster-induced massive displacement. Finally, Section 89 (323/2009) provides that, if an individual has been denied for both protection, the Finnish Government can still grant with a temporary residence permit for one year.

ii. In Sweden, Section 2a of the Aliens Act²¹⁸ provides support for an individual otherwise in need of protection who is unable to return to the country of origin due to an environmental disaster.

iii. In Italy, in the event of natural disasters or any other extremely serious situations in countries outside the EU, temporary protection for particular humanitarian needs can be enforced according to the applicable legislation.²¹⁹

iv. In Denmark, Afghan families have been granted residence permits on humanitarian grounds during 2001-2006 due to severe drought in Afghanistan that could put them in a vulnerable situation if they been deported.²²⁰

²¹⁷ Finland: Act No. 301/2004 of 2004, Amendments up to 1152/2010 included, Aliens Act Finland. Access Date: 05.05.2020. Available at: <https://www.refworld.org/docid/4b4d93ad2.html>

²¹⁸ Swedish Code of Statutes, SFS 2009:1542, Published 30 December 2009, Act amending the Aliens Act (2005:716) issued on 17 December 2009. Access Date: 05.05.2020. Available at: <https://www.refworld.org/docid/5d271e784.html>

²¹⁹ National Legislative Bodies / National Authorities, Italy: Legislative Decree N. 286 Dated 25 July 1998, Consolidated act of provisions concerning regulations on immigration and rules about the conditions of aliens, 26 June 2004. Access Date: 05.05.2020. Available at: <https://www.refworld.org/docid/58c2aa5e4.html>

²²⁰ Kraler, A., Noack, M., & Cernei, T. (2012), pp. 10-11.

The above-mentioned protection mechanisms are pioneers in the sphere of climate change-induced migration but at the same time vague for not naming those individuals and not stipulating the related conditions in a more detailed way. It is vague who are those individuals exactly and whether they need a temporary or permanent solution or moved voluntarily or involuntarily. Also, the discretionary approaches and limited capacities of the countries on addressing this global issue show the need for a regional and global touch. The EU especially can benefit from Finnish law which presents a gradual protection mechanism that left no one behind. The EU can create this with a legal framework that has a specific reference to climate change-induced disasters while also granting them the legal status of “climate refugee”.

1.3. To Initiate for Protocols or International Agreements within the Framework of Regional and International Organisations

1.3.1. Regional Level

Environment and human rights are closely intertwined and several human rights including the right to life and the right to respect for private and family life are in danger of jeopardization by environmental degradation.²²¹ Environmental protection regulated in Article 11 of the TFEU, Article 37 of the Charter and lastly in the national law of the several Member States, e.g. Austria, Belgium, Finland, Germany, Greece, Hungary, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, the Netherlands and Sweden.²²²

While every Member States of the EU is a party to the Convention, the EU is in the process of accession to the ECHR in light of Article 6(2) TEU.²²³ As aforementioned, as an international human rights agreement the ECHR has its special

²²¹ Mendes Bota, J. (2009). Drafting an additional protocol to the European Convention on Human Rights, concerning the right to a healthy environment. Parliamentary Assembly, Doc. 12003, p. 3.

²²² Ibid., p. 4; International Bar Association (2014). *Achieving justice and human rights in an era of climate disruption: Climate change justice and human rights task force report*, p. 120. Access Date: 26.07.2020. Available at: <https://www.ibanet.org/PresidentialTaskForceClimateChangeJustice2014Report.aspx>

²²³ van Duren, C. (2018). “The legal obligations for the European Union to protect climate-induced migrants crossing European borders”. Master’s Thesis LL.M International and European Law Tilburg Law School, p. 39.

spot in the evolvement of EU human rights law as guiding the creation of the Charter's provisions and the CJEU's case law. Furthermore, although the EU is not directly bound by the judgments of the ECtHR and not subject to its principal direct control mechanism before accession, the CJEU in advance brought its judgments in line with the ECtHR.²²⁴

The ECHR does not set any provisions regarding the right to a healthy environment, however, the ECtHR has considered the right to a healthy environment indirectly by applying other human rights stipulated in the Convention.²²⁵ This can be seen clearly in the several judgments of the ECtHR. For instance, both in *Öneryildiz v. Turkey*²²⁶ and *Budayeva and Others v. Russia*²²⁷ case, environmental degradation and its link between Article 2 of the ECHR were stipulated. In both cases, States failed to fulfill their obligation to protect the individuals against environmental harm (e.g. the explosion of the methane and large-scale mudslide) although the authorities were aware of the risks.²²⁸ Furthermore, in the *López Ostra v. Spain* case²²⁹, the ECtHR decided that the state has violated its positive obligation to secure the rights on home, private and family life that arising from Article 8 of the ECHR since the severe risks on life and health that arise from environmental pollution.²³⁰

As can be seen, the ECtHR focuses on environment-related degradation and its effect on human rights. For this reason, climate change-induced human rights concerns are not/cannot be ignored in the judgments of the ECtHR.²³¹ Because the ECtHR acknowledged that the ECHR is a "living instrument" and expanded the interpretation

²²⁴ van Duren, C. (2018), pp. 39, 61-62; International Bar Association (2014), p. 120; Craig, P. & de Búrca, G. (2011), pp. 267-268.

²²⁵ Mendes Bota, J. (2009), pp. 1, 4-6; van Duren, C. (2018), p. 34.

²²⁶ *Öneryildiz v. Turkey* [2004] ECtHR [Grand Chamber], Application No. 48939/99.

²²⁷ *Budayeva and Others v. Russia* [2008] ECtHR, Application Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02.

²²⁸ van Duren, C. (2018), p. 34; Duymaz, E. (2012). "Avrupa İnsan Hakları Mahkemesi'nin Çevrenin Korunmasına Katkısı". İstanbul Üniversitesi Siyasal Bilgiler Fakültesi Dergisi, No: 47, pp. 135-136; Mendes Bota, J. (2009), pp. 4-5.

²²⁹ *López Ostra v. Spain* [1994] ECtHR, Application No. 16798/90.

²³⁰ Abbas, K. (2013). "The development of the right to a healthy environment through the case Law of the European Court of Human Rights". Master's Thesis University of Oslo, p.22; van Duren, C. (2018), pp. 37-38; Mendes Bota, J. (2009), pp. 4-5.

²³¹ Duymaz, E. (2012), p. 123.

of the human rights protection of the ECHR by recognizing States' responsibilities through the specific and up-to-date reading of its provisions.²³²

However, the ECtHR recognizes that there are some environment-related rights in the Convention, but also reiterates that the ECHR cannot be a direct tool for giving protection for the right to a healthy environment.²³³ In regard to this problem, the PACE continuously made important suggestions to the Committee of Ministers of the Council of Europe (CoE) for the recognition of the right to a healthy environment by drafting an additional protocol to the ECHR.²³⁴ The PACE also reminded that the States have responsibilities under Article 2, Article 3 and Article 8 of the ECHR during an environmental degradation.²³⁵

Although the issue and need remain urgent, no concrete steps have been taken on drafting an additional protocol for the right to a healthy environment ever since the PACE suggested over twenty years ago.²³⁶ The protocol would help the ECtHR for examining the claims more systematically and comprehensively, to the individuals for having a specific protection mechanism for their specific problem, to the States for abiding by existing human rights principles. The major human rights protection tool and mechanism of Europe should have to do more than it does now since in the near future climate change-induced human rights violations will arise before the ECtHR.²³⁷

It is also crucial to state that, although the ECHR did not directly mentions asylum seekers and refugees, individuals who have been in the Contracting State can benefit from those rights regardless of whether they are asylum seekers or obtained legal status.²³⁸

²³² Ibid.; International Bar Association (2014), p. 120.

²³³ Duymaz, E. (2012), p. 125.

²³⁴ Parliamentary Assembly (2009), Recommendation 1885; Parliamentary Assembly (2003), Recommendation 1614; Parliamentary Assembly (1999), Recommendation 1431.

²³⁵ Mendes Bota, J. (2009), p. 2.

²³⁶ Duymaz, E. (2012), p. 158.

²³⁷ International Bar Association (2014), p. 120.

²³⁸ Güner, N. Ö. (2016). "Avrupa İnsan Hakları Mahkemesi'nin Mültecilerin Haklarının Korunmasındaki Rolü". Göç Araştırmaları Dergisi, Cilt: 2, Sayı: 2, pp. 214, 220.

As aforementioned, the ECHR always be the source of inspiration for the CJEU while establishing new general principles or referring to a human rights principle in its judgments. For this reason, regulating the right to a healthy environment in an additional protocol to the ECHR would also be an influential way of bringing explicit legal protection for climate refugees across the Contracting Parties, in particular the EU Member States. And, consequently, after the accession to the Convention, the EU also formally will be bound by it. This additional protocol and the judgments of the ECtHR can inspire other regional organizations and also can bring awareness to the issue worldwide in the future.

1.3.2. International Level

The implementation of the 1951 Refugee Convention has already become very delicate due to the other persecution factors the massive number of individuals are facing and the general attitude of the parties towards those individuals.²³⁹ This outlook already lowers the expectation of providing legal protection for climate refugees through this Convention.²⁴⁰ Because the Convention already does not protect the individuals that fall under its scope.²⁴¹ Moreover, adding climate change as persecution on that Convention could result in undermining other persecutions, or vice versa.²⁴² In sum, an independent international agreement will help in focusing on the problem more comprehensively by avoiding the limits of existing legal frameworks.²⁴³

Three types of international agreements exist in the sphere of EU law which can be distinguished by the drafted parties, such as by the EU, both by the EU and some Member States and by the several Member States.²⁴⁴ As can be seen, the EU has a legal personality that gives a right to make an international agreement.²⁴⁵ The EU can enter

²³⁹ Özdemir, A. (2018). *Göçmen-Mülteci İkileminde Yeni Bir Kavram: "İklim Mültecileri"*. I. Uluslararası Göç ve Mülteci Kongresi Bildirileri. Editör: Ertuğrul, A. & Uludağ, M. E. Düzce: Düzce Üniversitesi Yayınları, p. 153.

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² Verdier-Jouclas, M. C. (2019), pp. 16-17.

²⁴³ Ammer, M., Nowak, M., Stadlmayr, L., & Hafner, G. (2010). "Legal Status and Legal Treatment of Environmental Refugees". Germany: Federal Environment Agency, p. 12. Access Date: 20.09.2020. Available at: <http://www.uba.de/uba-info-medien-e/4035.html>; Tekin, E. (2020), p. 330.

²⁴⁴ Rosas, A. (2011), pp. 1305-1306.

²⁴⁵ Article 47, TEU; Article 218, TFEU.

into an agreement with an international organization, e.g. one of the UN organizations, where the agreement is needed in order to reach the policies and aims stipulated in the Treaties.²⁴⁶ For instance, Article 21(2) of the TEU stipulated that the EU must create common policies and actions and put them into practice in the sphere of the international areas in order to intensify and assist human rights. According to Article 4 of TFEU, the EU and the Member States have shared competence in creating legal instruments (e.g. an international agreement) for climate change.²⁴⁷

The EU is home to the wealthiest and most stable countries in the world and has a related mechanism to help those most vulnerable. It is important to reiterate that there is an urgent need for legal recognition and protection for climate refugees. If the EU will not create legal and safe channels for migration and acknowledge legal status for climate refugees, not a single country could be able to do it either. Therefore, the EU should stand as an active leader during an unprecedented global crisis and present the understanding of climate change-induced migration as a way of reducing vulnerability for both at the international, regional and national levels. The EU can do this with the most powerful actor in the international area, i.e the UN.

The EU and UN have been established during the same problematic period of history and both organizations have similar values on certain subjects including peace, development and human rights.²⁴⁸ For instance, the EU is a party to the UNFCCC, the Kyoto Protocol and Paris Agreement as the only regional name.²⁴⁹ Also, although the EU is not a party to the UN, it carries “enhanced observer status” in the UN that allows expressing opinions and working in close cooperation.²⁵⁰ While this status does not allow the EU to vote or suggest policies, the EU can do this indirectly through the help of the Member States.²⁵¹ It can be said that the EU already has an active role in the

²⁴⁶ Mohay, Á. (2017), p. 152.

²⁴⁷ van Duren, C. (2018), pp. 14-15.

²⁴⁸ Medinilla, A., Veron, P. & Mazzara, V. (2019). “EU-UN cooperation: confronting change in the multilateral system”. Discussion Paper No. 260, p. 4.

²⁴⁹ United Nations Climate Change. "UNFCCC Process and meetings - Parties". Access Date: 12.09.2020. Available at: <https://unfccc.int/node/61063>

²⁵⁰ Medinilla, A., Veron, P. & Mazzara, V. (2019), p. 4.

²⁵¹ Ibid.

creation and implementation of the international human rights framework through the actions of the Member States in the UN.²⁵²

As aforementioned, the UN has consistently drafted special human rights framework mechanisms for vulnerable groups, such as for refugees through the Convention on the Status of Refugees, for women through the CEDAW, for children through the CRC and for disabled through the CRPD, in order to remove the barriers on enjoying human rights in the same degree with others.²⁵³ It shows that the UN also has the ability to shed light on the legal status and protection of climate refugees by drafting a Convention on the Status and Protection of Climate Refugees.

The EU and the UN can act together and maximize the effort for solving a global problem while avoiding differences, conflict or repetition. The EU can become a party of the international human rights agreement within the framework of the UN. There is a prior example to this. As aforementioned, although the parties of international human rights agreements are traditionally the countries, the EU became a party in the CRPD.

There are particular aspects that are worth mentioning regarding the CRPD for getting insights while drafting international human rights agreements in the future. First of all, Article 44(1) allowed regional organizations, such as the EU, to become a party to the Convention. Second of all, the CRPD is a mixed agreement that the Member States of the EU and the EU itself ratified which both parties have jurisdiction and competence.²⁵⁴ Third of all, the EU ratified the CRPD before some Member States did, which highlights the EU's independent legal personality.²⁵⁵ Lastly, the EU can hold the

²⁵² United Nations (2006). *The partnership between the UN and the EU: The United Nations and the European Commission working together in Development and Humanitarian Cooperation*. Brussels: United Nations System, p. 8.

²⁵³ Mustaniemi-Laakso, M. et al., p. 2.

²⁵⁴ Uldry, M. (2016). "The Ratification of the UN Convention on the Rights of Persons with Disabilities by the European Union. Study of the Consequences for Persons with Disabilities". Master Thesis LL.M International Laws Faculty of Law Maastricht University, p. 16.

²⁵⁵ *Ibid.*, p. 17.

Member States responsible in case of failure to adapt and implement the related provision of the CRPD since the Convention became a part of EU law.²⁵⁶

In this context, for abiding by its human rights policies and following the responsibilities that were given by the Treaties, the EU can and even must conclude an international agreement within the framework of the UN in regard to the legal status and effective legal protection of climate refugees whose legal protection is extremely connected with human rights. The EU should focus on the links between climate change and migration as a starting point for a response and consider how efficiently and carefully ensure and protect those directly affected individuals' human rights during the whole cycle. Due to the absence of a legally binding definition of climate refugees, the first step needed is to develop a new legal definition while setting up comprehensive rules during the process of asylum-seeking. As offered by us, the definition of climate refugees could be:

"Individuals who were forced or choose to leave their homes temporarily or permanently due to sudden or slow-onset climate events that affect their lives or living conditions in a serious manner."

The provisions of the international agreement must contain the rights to life, health and an adequate standard of living, accompanied by a combination of negative obligations for States to refrain from taking action that would interfere with rights and positive obligations for States to fulfill the protection of rights. The legal guarantees must be stipulated to ensure that all persons are able to enjoy all those rights and freedoms in practice. The right to access justice or judicial remedies must be recognized and administrative and judicial proceeding mechanisms must be stipulated in order to protect more efficiently against the possibility of violations of the Member States regarding fulfilling their obligations. The framework must ensure that the Member States will respect human rights throughout the asylum-seeking process and after. Also, for abiding climate justice, the highest risk countries and their citizens in vulnerable

²⁵⁶ Uldry, M. (2016), p. 18.

groups, such as women, children, elderly and individuals who have disabilities or low-income levels, should be the main focus when developing measures. Because they are most likely to have the lowest capacity to prevent, mitigate and adapt the effect of climate change.

In order to understand the possible contribution of international agreements in regard to protection for climate refugees, their place within the overall hierarchy must be reiterated. In the hierarchy of norms, international agreements concluded by the EU are situated between primary law and the secondary law of the EU law.²⁵⁷ This means they are superior to secondary law such as regulation or directives. Also, the monist approach of the EU led the binding effect of the international agreements that concluded by the EU without any further action for their implementation.²⁵⁸ The consistent ruling of the CJEU since the *Haegeman*²⁵⁹ case is that the provisions of an international agreement became an integral part of the EU law when it enters into force.²⁶⁰ The CJEU has also ruled that if a Member State will not take the necessary measures for the implementation of the international agreement of the EU, it will violate its responsibilities regulated under EU law.²⁶¹

In conclusion, the EU can conclude an international agreement with the UN regarding the acknowledgment and protection of climate refugees and this will be binding both for the EU institutions and for its Member States without needing any other effort. As can be seen through Article 218 of the TFEU, while concluding an international agreement almost every institution of the EU is getting involved and shares their opinion throughout the whole process. In this way, every voice and concerns can be heard while making something comprehensive and adequate. For this reason, this is the most practical, effective and inclusive way to fill the gap for the protection of climate refugees. Because a framework for the determination of the status and rights of climate refugees will ensure the identification of those entitled to

²⁵⁷ Kaczorowska, A. (2013). *European Union Law*. Routledge, p. 122.

²⁵⁸ Mohay, Á. (2017), p. 155; Karayığit, M. T. (2019), p. 205.

²⁵⁹ Case 181/73, *Haegeman v. Belgium* [1974] ECR I-449.

²⁶⁰ Mohay, Á. (2017), pp. 154-155; Craig, P. & de Búrca, G. (2011), p. 338.

²⁶¹ Craig, P. & de Búrca, G. (2011), p. 338.

protection and the scope of the protection. The framework can make it easier for a Member State to fulfill its obligations arising from EU law. Consequently, Member States would not use an excuse in a delicate human rights-related issue that requires their unified actions.

1.4. To Adopt a Regulation

As aforementioned, there are drawbacks at the current types of protection for climate refugees and the EU should use its authority given by Article 78 of the TFEU to develop a new legislative framework for a common asylum scheme. Therefore, at first, the EU's legislative procedure will be reviewed. Later on, the reason why a regulation should be adopted will be discussed.

The hierarchical order of secondary law depends upon whether they are legislative, delegated or implementing acts. This simply means that legislative acts are superior to them and the other two acts are under the danger of being invalid by the higher sources.²⁶² For this reason, non-legislative acts cannot be as effective as legislative acts for creating something from the bottom.

There are two ways to adopt a legislative act: the ordinary legislative procedure and the special legislative procedure. The European Parliament, the Council of the European Union and the European Commission take part in the adoption of a legislative act in varying degrees. In both legislative procedures, the first step is the proposal of the European Commission. In the ordinary legislative procedure, in an equal footing, the European Parliament and the Council jointly adopt legislative acts either in the first or second reading.²⁶³ In the special legislative procedure, which is used in more sensitive policy areas, the Council is the sole legislator where the role of the European Parliament is limited to either consultation or consent.²⁶⁴

²⁶² Rosas, A., & Armati, L. (2018), p. 104.

²⁶³ Article 289(1), TFEU

²⁶⁴ Article 289(2), TFEU

In brief, the EU institutions can adopt a legislative act, which is binding in its entirety and directly applicable in all Member States rather than which is binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods. In this way, the EU can ensure that the legislative framework corresponds to the needs of climate refugees. Article 296 of the TFEU stipulates that the EU institutions can choose the legal act that will be adopted according to the circumstances while taking into consideration the principle of proportionality if there is no specific legal act required by the Treaties. The two most common forms of the EU legal act are regulations and directives. For this reason, these two legislative acts will be compared in order to understand which is more accurate to use for setting the protection for climate refugees.

On one hand, according to Article 288 of the TFEU, regulations have general application and direct applicability in every Member States. To explain in a more detailed way, regulations carry a standard implementation which means they stipulate the same provisions throughout the EU and must be fully applied by every Member State.²⁶⁵ This means that the Member States cannot apply a regulation incompletely or partially and cannot apply the national law that contradicts the provisions of the regulation.²⁶⁶ Directly applicable means that the regulations do not have to be transposed into national law since they grant rights or puts responsibilities in the same way as national law.²⁶⁷

On the other hand, directives aim to protect EU law while respecting the variety of national-level implementation. Directives are doing this simply by not having direct applicability but addressing the obligations to the Member States for initiating the transposition process. As a result, the Member States that have discretion on transposition its national law in harmony with the directive can create differences throughout the Union.²⁶⁸

²⁶⁵ Schütze, R. (2012). *European Constitutional Law*. Cambridge University Press, p. 317.

²⁶⁶ Karayığit, M. T. (2019), p. 70.

²⁶⁷ Ibid., pp. 70-71; Karayığit, M. T. (2016). "Are directives directly applicable?". *Ankara Avrupa Çalışmaları Dergisi*, Cilt: 15, No: 2, p. 70.

²⁶⁸ Karayığit, M. T. (2016), p. 68.

In comparison, for creating a legal channel for climate refugees in the EU and Member State level, regulations are more practical and effective comparing to directives. Because regulations are fully binding while directives are binding for the achieved results. This means that the Member States have discretion on the choice of format and procedure on the transposition of the directives.²⁶⁹ So, although they are not superior to each other in the overall hierarchy, regulations have a greater influence owing to being directly applicable in the Member States. Also, becoming applicable after the transposition of the Member States makes the directive to enter into force later than regulations.²⁷⁰ For this reason, the individuals can face with the time limitation for applying the related rights stipulated in the directives.²⁷¹ But most importantly, the transposition process for the directives by every Member State evidently indicates that receiving protection will differ significantly from one Member State to another.

In addition to all, the risk always exists when giving the power to someone else, which in this context a Member State might not fully abide by its obligations that arise from a directive. There are many cases before the CJEU regarding the non-transposition of directives by the Member States and many more directives' transposition process is problematic.²⁷² However, the most significant and pioneer case was *Francovich and Bonifaci v. Italy*.²⁷³ The applicants brought proceedings against Italy by claiming that the government should pay their salary since it failed to transpose the Directive 80/987 that aimed to build a mechanism to protect employees when their employers' bankrupted.²⁷⁴ As a result of this case, state liability was established as a general principle of EU law.²⁷⁵

As can be seen, directives are time-consuming and risky regarding the ending. For this reason, adopting a directive will not be as practical and effective as much as

²⁶⁹ Craig, P. & de Búrca, G. (2011), p. 106.

²⁷⁰ Rosas, A., & Armati, L. (2018), pp. 130-131.

²⁷¹ Ibid.

²⁷² Kaeding, M. (2007). "Active Transposition of EU Legislation". EIPAScope 2007/3, p. 3.

²⁷³ Cases C-6 & 9/90, *Francovich and Bonifaci v. Italy* [1991] ECR I-5357.

²⁷⁴ Ibid., paras. 1, 5-6.

²⁷⁵ Ibid., para. 35.

adopting a regulation. This can be seen clearly in the studies and reports that analyze the transposition of the Qualification Directive, the Asylum Procedures Directive and the Reception Conditions Directive.

First of all, in 2009, after the Commission's proposal for amending the Qualification Directive, both UNHCR and European Council on Refugees and Exiles (ECRE) prepared studies and they have found a problem in regard to its transposition.²⁷⁶ In particular, they have focused on the different approaches of the Member States for the asylum seekers that come from the same country and have similar ground for persecution.²⁷⁷ For instance, in 2008, Greece did not grant international protection to the asylum seekers come from Iraq, while Germany gave protection for the majority of them.²⁷⁸ The main reason for these different approaches is the discretion that was given to the Member States on the implementations of the directives in their domestic law.

Second of all, according to the report of the Commission in 2016, there were 70 open infringement procedures regarding the CEAS and 16 of them were about the "bad application" or "nonconformity" to the Qualification Directive, the Asylum Procedures Directive and the Reception Conditions Directive.²⁷⁹ The danger here is that the procedures mostly were opened against Greece, Italy, Cyprus that carry the burden as border countries of the EU. These Member States are clearly the representatives of the EU in the border. For this reason, both they and the EU should be more careful on abiding by EU human rights law.

Lastly, amending and broadening the scope of a directive might not guarantee for the climate refugees to be granted with the protection for the same reasons and the

²⁷⁶ UNHCR (2009). *UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted* (COM(2009)551, 21 October 2009), p. 2. Access Date: 08.09.2020. Available at: <https://www.unhcr.org/4c5037f99.pdf>

²⁷⁷ Ibid., pp. 2-3.

²⁷⁸ Ibid.

²⁷⁹ The European Commission (2016a). *Managing the Refugee Crisis. Balancing Responsibility and Solidarity on Migration and Asylum*, p. 2. Access Date: 19.05.2020. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/balancing_responsibility_and_solidarity_on_migration_and_asylum_20160210_en.pdf

individuals may not get access to the same level rights across the EU. As aforementioned, this can be seen more comprehensively on the Commission's report in 2019. The report indicated that for some provisions the Member States used different wording in national law which resulted in different assessments while granting protection.²⁸⁰ Overall, those actions affected the credibility and quality of the directive for the individuals who suffered from similar persecution in their country of origin. In the end, the fact that the individuals who need protection were assessed in different ways by the Member States made the protection mechanism uncertain and unstable.

Although harmonization of the directives means it is more suitable with the principle of subsidiarity, these studies made by the European Commission also give insight on why the Commission, in certain circumstances with regard to critical issues, should choose to adopt a regulation rather than a directive.²⁸¹ Because the Commission already sees that the directives will not work the way it is supposed to in the asylum policy area. In both legislative procedures of EU law, the required first step is the proposal of the European Commission. As aforementioned, the Commission already made a proposal in 2016 regarding changing the act type of Qualification Directive into the Qualification Regulation for avoiding breaches made by the Member States on the transposition of EU law and for providing a same degree protection across the EU.²⁸² Also, the latest proposals of the Commission on a New Pact on Migration and Asylum in September 2020 showed that in order to create a common asylum protection standards, adopting regulation is essential.²⁸³ For this reason, the Commission also proposed adopting five new regulations for the migration and asylum legal framework of the EU.²⁸⁴ Therefore, the Commission should propose for the adoption of a regulation for protecting climate refugees in the same degree and effectively throughout the Union.

To sum up, the different implementation and interpretation of the directive can create uncertainty for climate refugees when seeking protection across the EU. For this

²⁸⁰ The European Commission (2019), *Final Report*, p. 13.

²⁸¹ Karayığit, M. T. (2016), p. 68.

²⁸² The European Commission (2016b), COM(2016), 466 final, 2016/0223 (COD), pp. 4-6.

²⁸³ The European Commission (2020b), SWD(2020), 207 final, COM(2020) 610 final, p. 70.

²⁸⁴ *Ibid.*, p. 70.

reason, amending and broadening the scope of the existing directives (e.g. Qualification Directive) would not be a general solution at the EU level either. Therefore, a regulation must be adopted for revising the common asylum system for the climate refugees that is uniformly effective across the EU. It can help to grant protection for the same reason and with the same level rights since it is directly applicable and has the same effect in every Member State. In this way, climate refugees can receive adequate and common support across the EU within the creation of the conditions necessary for effective access to protection.

1.5. To Improve the Implementation of its Human Rights Standards

Human rights principles are the core values of the EU. The Treaties declare that the EU is built on respecting human rights and its external relations should be guided by that principle universally and without divided. The EU has a role and responsibility to protect human rights worldwide since human rights standards are binding for its Member States and the EU itself.²⁸⁵ However, it seems that the EU and its Member States continue to ignore and breach human rights in the asylum policy area. The main attitude is controlling migration and avoiding asylum seekers, instead of respecting the human rights of the displaced individuals and providing them safer and controlled legal channels into the EU.

Displacement is one of the most devastating consequences of disasters, particularly for the rights of individuals who are already in vulnerable situations. Because they are most likely to have the lowest capacity to prevent, mitigate and adapt the effect of climate change. For instance, developing countries carry the highest risk and there are citizens that are already vulnerable, such as women, children, elderly and individuals who have disabilities or low-income levels. The disastrous effect and risks that arise from displacement can be minimized by building and ensuring respect for human rights.²⁸⁶ For this reason, the EU must fulfill its responsibilities, give its main focus to the implementation of the human rights principles and provide that the asylum

²⁸⁵ Craig, P. & de Búrca, G. (2011), p. 362.

²⁸⁶ United Nations General Assembly (2015), A/RES/70/1.

seekers are treated in accordance with human rights standards recognized by EU law. Because it currently keeps failing even on the “standard” refugees protected under the law, let alone climate refugees. There are particular ways to do that:

As aforementioned, granting legal protection occurs under the Member States' sovereignty and in the light of EU law. This simply means that the practice of the Member States plays an important role in ensuring human rights for asylum seekers. In this context, the EU must give weight to imposing a sanction when a Member State seriously violates human rights during the implementation.²⁸⁷ The European Commission must show no exception when a Member State fails to comply with its responsibilities that arise from EU law. In order to prevent this type of action, the European Commission must open an infringement procedure against that Member State.²⁸⁸ It can be an effective tool of public enforcement to provide implementation by the Member States of EU law in regard to the protection of asylum seekers while pushing the Member States to prevent breaches related to human rights.²⁸⁹

The EU also has the ability to influence global governance by its policies and can shed light on migration as a way of reducing vulnerability to climate change.²⁹⁰ The EU can do this by changing the perspectives of the Member States in regard to refugees in general and enforcing them to abide by human rights enshrined in EU law.²⁹¹ The EU can and must do all of this based on a task assigned by the Treaties, which reminds to promote multilateral solutions on common issues and take into account developing countries when implementing a policy on development cooperation.²⁹²

²⁸⁷ Craig, P. & de Búrca, G. (2011), p. 363.

²⁸⁸ Article 258, TFEU; UN Human Rights Council (2013). Report of the Special Rapporteur on the human rights of migrants, François Crépeau. Regional study: management of the external borders of the European Union and its impact on the human rights of migrants. A/HRC/23/46, p. 22, para. 98; UN Human Rights Council (2015). Report of the Special Rapporteur on the human rights of migrants, François Crépeau. Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants. A/HRC/29/36, p. 21. para. 121.

²⁸⁹ United Nations General Assembly (2012), A/67/299, p. 19, para. 78.

²⁹⁰ UN Human Rights Council (2015), A/HRC/29/36, p. 17. para. 87.

²⁹¹ Ammer, M., Mayrhofer, M., Randall, A., & Salisbury, J. (2014), p. 36; UN Human Rights Council (2015), A/HRC/29/36, p. 21. para. 126.

²⁹² Article 21, TEU; Article 208, TFEU.

The influence of the EU citizens as a powerful group with competence in the field of policymaking cannot be overlooked too. The EU and its citizens can collaborate on creating a policy framework for the right to seek asylum and the right to a healthy environment just like when they did in the initiative titled "*Right2Water*" that aimed the access to safe drinking water for safeguarding human dignity and an adequate standard of living for everyone.²⁹³ As a result of an European Citizens' Initiative, the Commission can advocate for universal access for these rights and enforce the Member States to step up their efforts for guaranteeing them.²⁹⁴

²⁹³ The European Commission (2014). Communication From the Commission on the European Citizens' Initiative: "Water and sanitation are a human right! Water is a public good, not a commodity!". Brussels, COM(2014) 177 final, pp. 2-3.

²⁹⁴ Ibid., p. 13.

CONCLUSION

The worldwide focus is to reduce GHG emissions and decelerate the progression of climate change. But to date, the international community has failed to take concrete steps to understand and consequently implement a new well-structured policy and legal framework in regard to migration as the most disastrous impact of climate change. Over the last decade, the EU also has demonstrated a broad awareness of the human rights challenges that will arise by climate change, while not giving the main focus to displacement and the situation of climate refugees. Therefore, the risk of a breach of human rights necessitates an obligation to provide protection for those individuals since their countries cannot ensure the basic human rights and physical safety for them.

The EU has common standards and criteria for receiving and processing asylum seekers' applications and determining whether granting international protection. However, it is not effective, because the Member States are showing hesitance to accept asylum seekers and also ignorance towards the implementation of human rights. So, the EU must use fulfill responsibilities and give its prior focus to implementation of the human rights principles by the Member States, since they keep failing in the protection of even “standard” refugees, let alone climate refugees. The EU can do this by changing the perspectives of the Member States in regard to refugees in general and enforcing them to abide by human rights principles enshrined in EU law. For instance, the EU can impose a sanction by effectively opening an infringement procedure when a Member State seriously violates the human rights of asylum seekers that are protected under EU law.

In order to use its power in the international, regional and national areas, the EU also must learn from its mistakes. What the EU and the world, in general, learned from the most recent sudden-onset disaster “COVID-19”? Whether it happens suddenly or slowly, disasters know no border and will affect every country on earth no matter how far away they have been situated. It affects everyone on a different level, however,

reducing its disastrous effect can be achieved mostly by caring for the most vulnerable groups. It exceeds individual-level and requires solid actions both internationally and nationally. Prevention, which requires early actions that address challenges, is the key because it is easier, cheaper and safer than providing protection. To simplify, when massive migration flow occurs due to climate change, the best way to handle is not being caught without safeguards but to have an existing and efficient policy framework.

However, it seems like the international community is a bit late to prevent and mitigate the effects of climate change. The current situation and attitude of politicians, individuals, companies, etc. show that the international community, in general, does not take climate change seriously even though the risks are that high. The reluctance, unfortunately, presents that we are far from avoiding climate change. While the taken steps both at the EU and international level are influential, they are not sufficient for creating something that tender from scratch. The policies both in the EU and the UN show that they are still on the conversation level rather than taking necessary actions for the individuals who were forced or choose to leave their homes temporarily or permanently due to sudden or slow-onset climate events that adversely affect their lives or living conditions.

On one side, whereas the topic has begun gaining growing interest from the EU institutions in recent years, climate change has been continuously considered as an initiator of various types of crises: environmental, security-related and humanitarian. However, apart from the above-mentioned policy responses, it is accurate to say that climate change-induced migration and climate refugees are mostly forgotten on the EU agenda. The main problem here is that climate change still is not considered as a legal crisis by the EU.

On the other side, although climate refugees were repeatedly underscored as a policy issue with an important effort by the UN bodies and agencies, a specific instrument that ensures an integrated response in the sense of human rights protection for climate refugees has not been adopted yet. The existing actions helped to raise awareness on the issue, but not sufficient on bringing legal recognition and protection.

Moreover, in both academia and practice, there is no doubt that the human rights protection of those individuals is the answer. The broad scope of right-based claims in climate change litigation gives us an insight that everything can detrimentally be affected by climate change, whether it is life, family life, environment, culture or existence as a nation. However, these cases were mainly focused on right-based arguments rather than legal status. In addition to that, in one case climate change is considered as an additional ground for persecution rather than a sole reason, while in the other one climate change is considered as something to be worried in the future and put the burden of proof to the individuals. Only one case made a reference to climate refugees and recognized their existence, although it still did not recognize the applicant as a climate refugee.

Overall, although climate change and human rights interconnectedness recognized in the international, regional and national courts, there is so far no solid action regarding the protection of climate refugees under the framework of legal recognition. Although climate change litigation is gaining its strength, it is clear that it cannot solve the problem from scratch without giving legal recognition and will repeat itself in a vicious circle. These cases showed the slowness of the recognition process of climate refugees. However, legal recognition is an essential element for forcing and tracking States to abide by their positive obligation arising from human rights. The possible reason for this unwillingness is that whether it is an international, regional or national court, no one wants to take the responsibility to create something from the bottom that will have a worldwide effect.

To sum up, EU law does not help address the climate change-induced refugee crisis. Safer and controlled legal channels are still needed to open in order to protect the human rights of these individuals and for better migration management. Otherwise, those individuals will be left alone in the Mediterranean sea without a secure lifeboat both in law and fact. In this context, the best thing the EU can do is giving a legal protection mechanism for those individuals. This can be done by either initiating a proposal for an international agreement or adopting a regulation that will be directly applicable in every Member State of the EU.

The EU should focus on the links between climate change and migration as a starting point for a response and consider the ways to efficiently and carefully ensure and protect those directly affected individuals' human rights during the whole cycle. Due to the absence of a legally binding definition of climate refugees, the needed first step is to develop a legal definition. After that, the rights and responsibilities during and after the process of asylum-seeking must be set up comprehensively. For abiding by climate justice, the highest risk countries and their citizens in vulnerable groups, such as women, children, elderly and individuals who have disabilities or low-income levels should be the main focus when developing those provisions. Because they are most likely to have the lowest capacity to prevent, mitigate and in the end adapt to the effect of climate change.

The EU is home to the wealthiest and most stable countries in the world and has a related mechanism to help those most vulnerable. It is important to reiterate that there is an urgent need for legal recognition and protection for climate refugees. Thus if the EU will not create legal and safe channels for migration and acknowledge legal status for climate refugees, not a single country could be able to do it either. Therefore, the EU should stand as an active leader during an unprecedented global crisis and present the understanding of climate change-induced migration as a way of reducing vulnerability for both at the international, regional and national levels. The EU can do this with the most powerful actor in the international area, i.e the UN.

The UN has consistently drafted special human rights framework mechanisms for vulnerable groups. It shows that the UN also has the ability to shed light on the legal status and protection of climate refugees by drafting a Convention on the Status and Protection of Climate Refugees. The EU and the UN can act together and maximize the effort for solving a global problem while avoiding differences, conflict or repetition. Article 21(2) of the TEU regulated that the EU can create common policies and actions and put them into practice in the sphere of the international areas in order to intensify and assist human rights.

In this context, for abiding by its human rights policies and following the responsibilities that were given by the Treaties, the EU can conclude an international agreement with the UN, titled Convention on the Status and Protection of Climate Refugees. The Convention will be superior to secondary law such as regulation or directives. According to the case-law of CJEU, the Convention will be binding both for the EU institutions and for its Member States without needing any other effort and Member States will be responsible in case of violation.

In addition to concluding an international agreement, the EU can also draft regulation regarding the protection of climate refugees in light of Article 78 of the TFEU by using its given authority. Because of its different implementation and interpretation, the directive can create uncertainty for climate refugees when seeking protection across the EU. For this reason, amending and broadening the scope of the existing directives (e.g. Qualification Directive) would not be a general solution at the EU level either. Many studies, including the European Commission's, show the ineffectiveness of the directives in EU asylum law. Therefore, in light of Article 296 of the TFEU, the Commission can and must make a proposal for adopting a regulation for protecting climate refugees in the same degree throughout the Union.

The most significant risk that regulation carries is being invalid by the higher EU law. Other than, regulations have great importance in EU law. Because regulations carry a standard implementation which means that they stipulate the same provisions throughout the EU and must be fully applied by every Member State. This means that the Member States cannot apply a regulation incompletely or partially and cannot apply the national law that contradicts the provisions of the regulation. Directly applicable means that the regulations do not have to be transposed into national law since they grant rights or put responsibilities in the same way as national law. So in order to create a legal channel for climate refugees in the EU and Member State level, regulations are practical and effective owing to being directly applicable in the Member States.

Therefore, a regulation must be adopted for revising the common asylum system for the climate refugees that is uniformly effective across the EU. It can help to

grant protection for the same reason and with the same level rights since it is directly applicable and has the same effect in every Member State. In this way, climate refugees can receive adequate and common support across the EU within the creation of the conditions necessary for effective access to protection.

Lastly, at the regional level, the ECHR and the judgment of the ECtHR always be the source of inspiration for the CJEU while establishing new general principles or referring a human rights principle in its judgments. Therefore, the CJEU must focus on environment-related degradation and its effect on human rights and consider in its judgments just like the ECtHR. Because, although the ECHR does not set any provisions regarding the right to a healthy environment, the ECtHR has considered the right to a healthy environment indirectly by applying other human rights stipulated in the Convention. In addition to that, regulating the right to a healthy environment in an additional protocol to the ECHR would also be an influential and effective way of bringing explicit legal protection for climate refugees across the Contracting Parties, in particular the EU Member States. And, consequently, after the accession to the Convention, the EU also formally will be bound by it.

BIBLIOGRAPHY

Books & Reports

- Ammer, M., Mayrhofer, M., Randall, A., & Salsbury, J. (2014). *Time to Act: How the EU can lead on climate change and migration*. In S. Brugger (Ed.). Belgium: Heinrich-Böll-Stiftung, European Union.
- Brauch, H. G. (2010). *Climate Change and Mediterranean Security: International, National, Environmental and Human Security Impacts for the Euro-mediterranean Region During the 21st Century: Proposals and Perspectives*. European Institute of the Mediterranean.
- Brown, O. (2008). *Migration and Climate Change*. IOM Migration Research Series No. 31. Geneva: International Organization for Migration.
- Care Danmark (2016). *Fleeing Climate Change. Impacts on Migration and Displacement*.
- Craig, P. & de Búrca, G. (2011). *EU Law Text, Cases, and Materials*. Oxford University Press, Fifth Edition.
- Edwards, A., & Ferstman, C. (Eds.). (2010). *Human security and non-citizens: law, policy and international affairs*. Cambridge University Press.
- El Haggag, S. (2007). *Sustainable Industrial Design and Waste Management: Cradle-to-cradle for Sustainable Development*. Academic Press.
- Flavell, A. (2014). *IOM Outlook on Migration, Environment and Climate Change*. In M. T. Chazalnoël (Ed.) Switzerland: International Organization for Migration.
- Gahre, C. (2011). *The Nansen Conference Climate Change and Displacement in the 21st Century*. Oslo, Norway: Norwegian Refugee Council.
- Goodwin-Gill, G. S. & McAdam, J. (2007). *The Refugee in International Law*. Oxford University Press

- Institute for Economics & Peace (2019). *Global Peace Index 2019: Measuring Peace in a Complex World*. Sydney.
- International Federation of Red Cross and Red Crescent Societies (2016). *World Disasters Report, Resilience: Saving Lives Today, Investing for Tomorrow*. Sanderson, D. & Sharma, A. (Eds.).
- International Bar Association (2014). *Achieving justice and human rights in an era of climate disruption: Climate change justice and human rights task force report*.
Access Date: 26.07.2020. Available at:
<https://www.ibanet.org/PresidentialTaskForceClimateChangeJustice2014Report.aspx>
- IPCC (1992). *First Assessment Report Overview and Policymaker Summaries and 1992 IPCC Supplement*. In: *Climate Change: The IPCC 1990 and 1992 Assessments*.
- IPCC (2012). *Summary for Policymakers*. In: *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation* [Field, C.B., V. Barros, T.F. Stocker, D. Qin, D.J. Dokken, K.L. Ebi, M.D. Mastrandrea, K.J. Mach, G.-K. Plattner, S.K. Allen, M. Tignor, and P.M. Midgley (eds.)]. A Special Report of Working Groups I and II of the Intergovernmental Panel on Climate Change. Cambridge University Press, Cambridge, UK, and New York, NY, USA, (pp. 3-21).
- Kaczorowska, A. (2013). *European Union Law*. Routledge.
- Karayığit, M. T. (2019). *Avrupa Birliği Anayasa Hukuku*. Seçkin Yayıncılık.
- Kälin, W. (2012). *Conceptualising Climate-Induced Displacement*. In: McAdam, J. (Ed.) *Climate Change and Displacement. Multidisciplinary Perspectives* (pp. 81-103).

- Kraler, A., Cernei, T., & Noack, M. (2011). *Climate refugees: Legal and policy responses to environmentally induced migration*. DGIPOL Policy Department C: Citizens' Rights and Constitutional Affairs Study. Brussels: European Parliament.
- Lambert, J. (2002). *Refugees and the Environment: The Forgotten Element of Sustainability*. The Greens/European Free Alliance in the European Parliament.
- Magnan, A., Garnaud, B., Billé, R., Gemenne, F., & Hallegatte, S. (2009). *The future of the Mediterranean from impacts of climate change to adaptation issues*. France.
- McAdam, J. (2008). *The Refugee Convention as a Rights Blueprint for Persons in Need of International Protection*. In J. McAdam (Ed.). *Forced Migration, Human Rights and Security*, London: Hart Publishing.
- Mckernan, L., Arena, C. & Duyck, S. (2020). *States' Human Rights Obligations in the Context of Climate Change: 2020 Update* by The Center for International Environmental Law and The Global Initiative for Economic, Social and Cultural Rights is licensed under a Creative Commons Attribution 4.0 International License. In Marie Mekosh (Ed.).
- Mouzourakis, M. & Pollet, K. & Fierens, R. (2017). *The concept of vulnerability in European asylum procedures*. ECRE.
- Mustaniemi-Laakso, M., Heikkilä, M., Del Gaudio, E., Konstantis, S., Casas, M.N., Morondo, D., Hegde, V.G. & Finlay, G. (2016). *The protection of vulnerable individuals in the context of EU policies on border checks, asylum and immigration*. Work Package No. 11 – Deliverable No. 3.
- Nakanishi, Y. (2018). *Contemporary Issues in Human Rights Law: Europe and Asia*. Springer Nature.
- Neubauer, V. (2011). *How Could the Convention On the Elimination of All Forms of Discrimination Against Women (CEDAW) Be Implemented in the EU Legal*

Framework? Directorate General For Internal Policies Policy Department C: Citizens' Rights and Constitutional Affairs Gender Equality. Brussels: European Parliament.

Özdemir, A. (2018). *Göçmen-Mülteci İkileminde Yeni Bir Kavram: "İklim Mültecileri"*. I. Uluslararası Göç ve Mülteci Kongresi Bildirileri. Editör: Ertuğrul, A. & Uludağ, M. E. Düzce: Düzce Üniversitesi Yayınları, (ss. 145-154).

Pazarcı, H. (1989). *Uluslararası Hukuk Dersleri II. Kitap*. Ankara: Ankara Üniversitesi Siyasal Bilgiler Fakültesi.

Rosas, A., & Armati, L. (2018). *EU Constitutional Law: An Introduction*. Bloomsbury Publishing.

Schütze, R. (2012). *European Constitutional Law*. Cambridge University Press.

Sgro, A. (2009). *Views on, and Possible Solutions to, the Environmental Refugees Issue Within the European Union*. Oliver-Smith, A. & Shen, X. (Eds.). In *Linking Environmental Change, Migration & Social Vulnerability*. Germany: UNU Institute for Environment and Human Security (UNU-EHS), No.12/2009, (pp. 74-80).

The European Commission (2016a). *Managing the Refugee Crisis. Balancing Responsibility and Solidarity on Migration and Asylum*. Access Date: 19.05.2020. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/balancing_responsibility_and_solidarity_on_migration_and_asylum_20160210_en.pdf

The European Commission (2019). *Evaluation of the application of the recast Qualification Directive (2011/95/EU), Final Report*. Luxembourg: Publications Office of the European Union.

United Nations (2006). *The partnership between the UN and the EU: The United Nations and the European Commission working together in Development and Humanitarian Cooperation*. Brussels: United Nations System.

United Nations (2015). *Sendai Framework for Disaster Risk Reduction 2015-2030*. Access Date: 19.05.2020. Available at: <https://www.undrr.org/publication/sendai-framework-disaster-risk-reduction-2015-2030>

United Nations General Assembly (2015). *Resolution 70/1. Transforming our world: the 2030 Agenda for Sustainable Development*. A/RES/70/1.

UN Environment (2019). *Global Environment Outlook – GEO-6: Summary for Policymakers*. Cambridge University Press.

United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) (2020). *COVID-19 and Ending Violence Against Women and Girls. EVAW COVID-19 briefs*. Access Date: 19.05.2020. Available at: <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/issue-brief-covid-19-and-ending-violence-against-women-and-girls-en.pdf?la=en&vs=5006>

UNHCR (2009). *UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted* (COM(2009)551, 21 October 2009). Access Date: 08.09.2020. Available at: <https://www.unhcr.org/4c5037f99.pdf>

Articles

Aleinikof, T. A. (2018). “The Unfinished Work of the Global Compact on Refugees”. *International Journal of Refugee Law*, Vol 30, No 4, (pp. 611–617).

- Ammer, M., Nowak, M., Stadlmayr, L., & Hafner, G. (2010). "Legal Status and Legal Treatment of Environmental Refugees". Germany: Federal Environment Agency. Access Date: 20.09.2020. Available at: <http://www.uba.de/uba-info-medien-e/4035.html>
- Banda, M. L. (2018). "Inter-American Court of Human Rights' Advisory Opinion on the Environment and Human Rights". ASIL Insights: Volume 22, Issue 6. Access Date: 19.08.2020. Available at: https://www.asil.org/insights/volume/22/issue/6/inter-american-court-human-rights-advisory-opinion-environment-and-human#_ednref32
- Chetail, V. (2020). "The Global Compact for Safe, Orderly and Regular Migration: A Kaleidoscope of International Law". International Journal of Law in Context.
- Demirci, K. (2019). "Uluslararası ve Ulusal Mevzuat Hükümleri Çerçevesinde İklim Mültecisi Kavramı ve Türkiye Özelinde Yaratacağı Muhtemel Sorunlar". Türkiye Siyaset Bilimi Dergisi, Cilt: 2, Sayı: 2, (ss. 93-114).
- Duymaz, E. (2012). "Avrupa İnsan Hakları Mahkemesi'nin Çevrenin Korunmasına Katkısı". İstanbul Üniversitesi Siyasal Bilgiler Fakültesi Dergisi, No: 47, (ss. 121-160).
- Ekşi, N. (2016). "İklim Mültecileri". Göç Araştırmaları Dergisi, Cilt 2, Sayı 22, (ss. 10-58).
- Garcés-Mascareñas, B. (2015). "Why Dublin 'doesn't work'". Notes internacionales CIDOB 135, (pp. 1-5).
- Goodwin-Gill, G. S. (2014). "The International Law of Refugee Protection". The Oxford Handbook of Refugee and Forced Migration Studies, (pp. 36-47).
- Güner, N. Ö. (2016). "Avrupa İnsan Hakları Mahkemesi'nin Mültecilerin Haklarının Korunmasındaki Rolü". Göç Araştırmaları Dergisi, Cilt: 2, Sayı: 2, (ss. 212-241).

- Felli, R. (2012). "Managing Climate Insecurity by Ensuring Continuous Capital Accumulation: Climate Refugees and Climate Migrants". *New Political Economy*, iFirst, (to be published).
- Halberstam, D. (2016). "Opinion 2/13 of the Court (CJEU)". *International Legal Materials*, 55(2), (pp. 267-306).
- Kaeding, M. (2007). "Active Transposition of EU Legislation". *EIPAScope* 2007/3.
- Karayığit, M. T. (2016). "Are directives directly applicable?". *Ankara Avrupa Çalışmaları Dergisi*, Cilt: 15, No: 2, (ss. 59-95).
- Kälin, W. "From the Nansen Principles to the Nansen Initiative. Preventing Displacement". *FMR* 41. (pp. 48-49). Access Date: 18.03.2020. *Available at:* <https://www.fmreview.org/preventing/kalin>
- Kälin, W. (2018). "The Global Compact on Migration: A Ray of Hope for Disaster-Displaced Persons". *International Journal of Refugee Law*, Vol 30, No 4, (pp. 664–667).
- Kraler, A., Noack, M., & Cernei, T. (2012). "Climate Refugees: Legal and Policy Responses to Environmentally-Induced Migration".
- Medinilla, A., Veron, P. & Mazzara, V. (2019). "EU-UN cooperation: confronting change in the multilateral system". Discussion Paper No. 260.
- Mohay, Á. (2017). "The status of international agreements concluded by the European Union in the EU legal order". *Pravni vjesnik: časopis za pravne i društvene znanosti Pravnog fakulteta Sveučilišta JJ Strossmayera u Osijeku*, 33(3-4), (pp. 151-164).
- Newland, K. (2018). "The Global Compact for Safe, Orderly and Regular Migration: An Unlikely Achievement". *International Journal of Refugee Law*, Vol 30, No 4, (pp. 657–660).

- Oelgemöller, C. & Allinson, K. (2020). "The Responsible Migrant, Reading the Global Compact on Migration". *Law and Critique* 31, (pp. 183–207).
- Özkan, I. (2011). "Avrupa İnsan Hakları Mahkemesi ve Avrupa Birliği Adalet Divanı Kararları Işığında Avrupa Birliği'nin Göç ve Sığınma Politikası". *Ankara Barosu Dergisi*, (1), (ss. 165-188).
- Reynaud, S. (2017). "Climate Refugees - To a Global Legal Statute".
- Rosas, A. (2011). "The Status in EU Law of International Agreements Concluded by EU Member States". *Fordham International Law Journal* Volume 34, Issue 5.
- Rouleau-Dick, M. (2018). "Why environmentally displaced persons from low-lying island nations are not climate "refugees": a legal analysis".
- Sakellari, M. "Climate change, migration and public health".
- Scott, M. (2014). "Natural Disasters, Climate Change and Non-Refoulement: What Scope for Resisting Expulsion under Articles 3 and 8 of the European Convention on Human Rights?" *International Journal of Refugee Law*, 26(3) (pp. 404-432).
- Sgro, A. (2008). "Towards recognition of environmental refugees by the European Union". *REVUE Asylon* (s), (6). Access Date: 16.06.2020. Available at: <https://www.reseau-terra.eu/article844.html>
- Steffens, J. (2019). "Climate Change Refugees in the Time of Sinking Islands". *Vand. J. Transnat'l L.*, 52, 727.
- Tekin, E. (2020). "Uluslararası Hukuk Bağlamında İklim Mültecilerinin Korunması Sorunu". *TBB Dergisi* 2020 (147), (ss. 313-332).

The European Commission (2014). "A Common European Asylum System". Luxembourg: Publications Office of the European Union. Access Date: 09.05.2020. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/ceas-factsheets/ceas_factsheet_en.pdf

The High Representative and the European Commission (2008). "Climate Change and International Security". S113/08. Access Date: 09.05.2020. Available at: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/reports/99387.pdf

Thomas, A. (2013). "Protecting People Displaced by Weather-Related Disasters and Climate Change: Experience from the Field". *Vt. J. Envtl. L.*, 15, 803.

Tripathi, S. (2018). "Climate Refugees Acknowledging the Existence of an Imminent Threat". 4(1) *NLUJ Law Review*.

Werz, M., & Hoffman, M. (2016). "Europe's twenty-first century challenge: climate change, migration and security". *European View* (pp. 145-154).

Thesis

Abbas, K. (2013). "The development of the right to a healthy environment through the case Law of the European Court of Human Rights". Master's Thesis University of Oslo.

Uldry, M. (2016). "The Ratification of the UN Convention on the Rights of Persons with Disabilities by the European Union. Study of the Consequences for Persons with Disabilities". Master's Thesis LL.M International Laws Faculty of Law Maastricht University.

van Duren, C. (2018). "The legal obligations for the European Union to protect climate-induced migrants crossing European borders". Master's Thesis LL.M International and European Law Tilburg Law School.

Treaties, Conventions, Protocols

Consolidated version of the Treaty on European Union [2012] Official Journal C 326/13.

Consolidated version of the Treaty on the Functioning of the European Union [2012] Official Journal C 326/47.

United Nations (1979). Convention on the Elimination of All Forms of Discrimination Against Women. UNTS Volume Number 1249.

United Nations (1987). Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. UNTS Volume Number 1465.

United Nations (1990). Convention on the Rights of the Child. UNTS Volume Number 1577.

United Nations (1992). United Nations Framework Convention on Climate Change. UNTS Volume Number 1771.

United Nations (1996). International Covenant on Civil and Political Rights. UNTS Volume Number 999.

United Nations (1998). Kyoto Protocol to the United Nations Framework Convention on Climate Change. UNTS Volume Number 2303.

United Nations (2008). Convention on the Rights of Persons with Disabilities. UNTS Volume Number 2515.

United Nations (2015). Paris Agreement. No. 54113.

UNFCCC Conference of the Parties (2012). Decision 3/CP.18 Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change to enhance adaptive capacity. Report of the Conference of the Parties

on its eighteenth session, held in Doha from 26 November to 8 December 2012, (pp. 21-24).

UNFCCC Conference of the Parties (2010). Decision 1/CP.16 The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention. Conference of the Parties Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010.

Other Sources

Commission of the European Communities (2009). White Paper on Adapting to climate change: Towards a European framework for action. Brussels, COM(2009) 147/4.

Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof [2001], OJ L.212/12-212/23.

Council of the European Union (2009). The Stockholm Programme - An open and secure Europe serving and protecting the citizen. Brussels, 17024/09.

Council of the European Union (2011). Council Conclusions on EU Climate Diplomacy. Brussels: 3106th Foreign Affairs Council meeting.

Council of the European Union (2013). Conclusions of the Council and of the Representatives of Governments of the Member States meeting within the Council on the 2013 UN High-Level Dialogue on Migration and Development and on broadening the development-migration nexus. Brussels, 12415/13.

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for

refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), [2011], OJ L. 337/9-337/26.

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), [2013], OJ L 180/60–95.

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), [2013], OJ L 180/ 96–116.

Finland: Act No. 301/2004 of 2004, Amendments up to 1152/2010 included, Aliens Act Finland. Access Date: 05.05.2020. Available at: <https://www.refworld.org/docid/4b4d93ad2.html>

Mendes Bota, J. (2009). Drafting an additional protocol to the European Convention on Human Rights, concerning the right to a healthy environment. Parliamentary Assembly, Doc. 12003.

National Legislative Bodies / National Authorities, Italy: Legislative Decree N. 286 Dated 25 July 1998, Consolidated act of provisions concerning regulations on immigration and rules about the conditions of aliens, 26 June 2004. Access Date: 05.05.2020. Available at: <https://www.refworld.org/docid/58c2aa5e4.html>

Parliamentary Assembly (1999). Future action to be taken by the Council of Europe in the field of environment protection. Recommendation 1431.

Parliamentary Assembly (2003). Environment and human rights. Recommendation 1614.

Parliamentary Assembly (2009). Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment. Recommendation 1885.

Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security, and justice (recast), [2013], OJ L. 180/1-180/30.

Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) [2013] OJ L. 180/31-180/59.

Swedish Code of Statutes, SFS 2009:1542, Published 30 December 2009, Act amending the Aliens Act (2005:716) issued on 17 December 2009. Access Date: 05.05.2020. Available at: <https://www.refworld.org/docid/5d271e784.html>

The European Commission (2013). Climate change, environmental degradation, and migration. Brussels, SWD(2013) 138 final.

The European Commission (2014). Communication From the Commission on the European Citizens' Initiative: "Water and sanitation are a human right! Water is a public good, not a commodity!". Brussels, COM(2014) 177 final.

The European Commission (2016b). Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and

amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. Brussels, COM(2016), 466 final, 2016/0223 (COD).

The European Commission (2020a). Proposal for a Regulation of the European Parliament and of the Council, establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law). Brussels, COM(2020), 80 final, 2020/0036 (COD).

The European Commission (2020b). Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU)XXX/XXX [Asylum and Migration Fund]. Brussels, SWD(2020), 207 final {COM(2020) 610 final}.

The European Parliament (1999). Resolution on the environment, security and foreign policy. Official Journal of the European Communities, C 128.

United Nations General Assembly (2012). Human Rights of Migrants: Note by the Secretary-General. A/67/299.

United Nations General Assembly (2016). Human Rights of Migrants: Note by the Secretary-General. A/71/285.

United Nations General Assembly (2017). Report of the Special Rapporteur on the Human Rights of Migrants on a 2035 Agenda for Facilitating Human Mobility. A/HRC/35/25.

UN Human Rights Council (2013). Report of the Special Rapporteur on the human rights of migrants, François Crépeau. Regional study: management of the external borders of the European Union and its impact on the human rights of migrants. A/HRC/23/46.

UN Human Rights Council (2015). Report of the Special Rapporteur on the human rights of migrants, François Crépeau. Banking on mobility over a generation:

follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants. A/HRC/29/36.

Verdier-Jouclas, M. C. (2019). A legal status for "climate refugees". Parliamentary Assembly, Doc. 14955.

Cases

Case 181/73, *Haegeman v. Belgium* [1974] ECR I-449.

Soering v. United Kingdom [1989] ECtHR, Application No. 14038/88.

Cases C-6 & 9/90, *Francovich and Bonifaci v. Italy* [1991] ECR I-5357.

López Ostra v. Spain [1994] ECtHR, Application No. 16798/90.

Öneryildiz v. Turkey [2004] ECtHR [Grand Chamber], Application No. 48939/99.

Jalloh v. Germany [2006] ECtHR [Grand Chamber], Application No. 58410/00.

Budayeva and Others v. Russia [2008] ECtHR, Application Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02.

M.S.S. v. Belgium and Greece [2011] ECtHR, Application No. 30696/09.

AD (Tuvalu) [2014] New Zealand: Immigration and Protection Tribunal, 501370-371.

Tarakhel v. Switzerland [2014] ECtHR, Application No. 29217/12.

Advisory Opinion OC-23/17 on the Environment and Human Rights [2017] the IACtHR, Requested by the Republic of Colombia.

Future Generations v. Ministry of the Environment and Others “Demanda Generaciones Futuras v. Minambiente” [2018] STC, 4360-2018.

Petition of Torres Strait Islanders to the UN Human Rights Committee Alleging Violations Stemming from Australia's Inaction on Climate Change, 13 May 2019.

Urgenda Foundation v. State of the Netherlands [2019] Supreme Court of the Netherlands, 19/00135.

Ioane Teitiota v. New Zealand [2020] UN Human Rights Committee, CCPR/C/127/D/2728/2016.

Websites

Bux, U. (2020). "Sources and Scope of European Union Law. Fact Sheets on the European Union". Access Date: 01.06.2020. Available at: https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.2.1.pdf

Chassagne, N. (2020). "Here's what the coronavirus pandemic can teach us about tackling climate change". Access Date: 05.04.2020. Available at: <https://theconversation.com/heres-what-the-coronavirus-pandemic-can-teach-us-about-tackling-climate-change-134399>

Curtis, K. (2015). "Refugees vs. Migrants? The Word Choice Matters". Access Date: 01.01.2020. Available at: <https://www.undispatch.com/refugees-vs-migrants-the-word-choice-matters/>

Directorate-General for Migration and Home Affairs (2018). "Refugees and stateless persons - common standards for qualification". Access Date: 05.05.2020. Available at: <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32011L0095>

EUR-Lex (2012). "Temporary protection if there is a mass influx of displaced people". Access Date: 05.05.2020. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:133124&from=EN>

- EUR-Lex. “European Union (EU) Hierachy of Norms”. Access Date: 01.06.2020.
Available at: https://eur-lex.europa.eu/summary/glossary/norms_hierarchy.html
- Eurostat (2019). “Resettled persons - annual data – persons”.
 Access Date: 21.04.2020. *Available at:*
<https://ec.europa.eu/eurostat/tgm/table.do?tab=table&plugin=1&language=en&pcode=tps00195>
- Eurostat (2020). “Asylum statistics - Statistics Explained”.
 Access Date: 25.04.2020. *Available at:*
https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#Number_of_asylum_applicants:_increase_in_2019
- Fabius, L. & Brende, B. “From the Arctic to the Sahel: uniting against climate disruption for a more secure future for all”. Access Date: 01.01.2020. *Available at:* <https://www.nanseninitiative.org/staff-member/from-the-arctic-to-the-sahel-uniting-against-climate-disruption-for-a-more-secure-future-for-all/>
- Figueres, C. (2020). “5 Lessons From Coronavirus That Will Help Us Tackle Climate Change”. Access Date: 15.04.2020. *Available at:* <https://time.com/5808809/coronavirus-climate-action/>
- Franklin, J. (2019). “PRIMER: how to make an EU law”. Access Date: 04.06.2020.
Available at: <https://www.iflr.com/Article/3905602/PRIMER-how-to-make-an-EU-law.html>
- Global Footprint Network. Access Date: 21.01.2020. *Available at:* <https://data.footprintnetwork.org/#/?/>
- Guterres, A. (2011). “Statement by Mr. António Guterres, United Nations High Commissioner for Refugees, Intergovernmental Meeting at Ministerial Level to mark the 60th anniversary of the 1951 Convention relating to the Status of Refugees and the 50th anniversary of the 1961 Convention on the Reduction of Statelessness”. Geneva. Access Date: 20.02.2020. *Available at:*

<https://www.unhcr.org/admin/hcspeeches/4ecd0cde9/statement-mr-antonio-guterres-united-nations-high-commissioner-refugees.html>

Law, T. (2019). “The Climate Crisis Is Global, but These 6 Places Face the Most Severe Consequences”. Access Date: 25.03.2020. Available at: <https://time.com/5687470/cities-countries-most-affected-by-climate-change/>

Nugent, C. (2019). “The 10 Countries Most Vulnerable to Climate Change Will Experience Population Booms in the Coming Decades”. Access Date: 25.03.2020. Available at: <https://time.com/5621885/climate-change-population-growth/>

The European Commission. (2017). “Resettlement: Ensuring Safe and Legal Access to Protection for Refugees”. Access Date: 05.04.2020. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20171114_resettlement_ensuring_safe_and_legal_access_to_protection_for_refugees_en.pdf

The European Commission. “Climate change and environmental degradation”. Access Date: 18.03.2020. Available at: https://ec.europa.eu/knowledge4policy/foresight/topic/climate-change-environmental-degradation_en

The European Commission. “Livelihoods at risk”. Access Date: 18.03.2020. Available at: https://ec.europa.eu/knowledge4policy/foresight/topic/climate-change-environmental-degradation/online-resource/livelihoods-migration_en

The Nansen Initiative. “Climate change, cross-border displacement and human rights: is there a protection gap and will COP21 help close it?” Access Date: 01.01.2020. Available at: <https://www.nanseninitiative.org/climate-change-cross-border-displacement-and-human-rights-is-there-a-protection-gap-and-will-cop21-help-close-it/>

- The World Bank. "CO2 emissions (metric tons per capita)". Access Date: 21.04.2020.
Available at: <https://data.worldbank.org/indicator/EN.ATM.CO2E.PC>
- UN News (2005). "UN University calls for recognition of those displaced by gradual environmental change". Access Date: 01.06.2020. *Available at:*
<https://news.un.org/en/story/2005/10/156422-un-university-calls-recognition-those-displaced-gradual-environmental-change>
- UN News (2018). "General Assembly officially adopts roadmap for migrants to improve safety, ease suffering". Access Date: 08.11.2020. *Available at:*
<https://news.un.org/en/story/2018/12/1028941>
- United Nations Climate Change. "UNFCCC Process and meetings - Parties". Access Date: 12.09.2020. *Available at:* <https://unfccc.int/node/61063>
- United Nations University Migration Network. "Environmental Change and Forced Migration Scenarios (EACH-FOR)". Access Date: 09.05.2020. *Available at:*
<https://migration.unu.edu/research/migration-and-environment/environmental-change-and-forced-migration-scenarios-each-for-2.html#outline>
- Vetter, D. (2020). "How Coronavirus Could Help Us Fight Climate Change: Lessons From The Pandemic". Access Date: 05.04.2020. *Available at:*
<https://www.forbes.com/sites/davidrvetter/2020/03/30/how-coronavirus-could-help-us-fight-climate-change-lessons-from-the-pandemic/#488e0a1a5abc>
- WHO. "Climate change and human health - risks and responses. Summary". Access Date: 19.05.2020. *Available at:*
<https://www.who.int/globalchange/summary/en/index5.html>