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## **The problem of “climate refugees” in view of international humanitarian law – selected issues**

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**Summary:** The article is an attempt to respond to the need to find international legal solutions, extremely important for people living in the countries threatened by the consequences of climate change, among others, the effects of rising sea levels in the seas and oceans. I try to direct attention to the still underestimated in the international law problem of the so-called “climate refugees”. Behind the concept that defies the classic definitions of “refugees”, there are hundreds of thousands today, and soon perhaps millions of people whose lives, health and property will be threatened by the forces of nature. The originality of the approach presented in the article is an attempt to consider whether appropriate legal solutions that protect vulnerable populations can be sought on the basis of international humanitarian law, since so far no other branch of international law seemed adequate to take up this challenge. The urgent and important dimension of the problems discussed in the article completes the necessity of searching for and finding answers to questions about the relationship between climate change and public international law. These are the legal consequences of climate deterritorialisation of sovereign states, such as the status of the population of the state without land territory, the loss of territories by archipelago states, the change of the sea borders, territorial waters, exclusive economic zones, and finally the responsibility of states for climate change. In the context of ‘climate refugees’, there is still no binding legal act that would meet the needs of thousands of people affected by climate change. This causes dissonance because, beyond any doubt, the situation in which these people find themselves raises a lot of fears - for their own lives, safety, health, etc. Today, entire communities and even countries face the problem of progressing deterritorialisation in face of climate threats. climate change, they face the risk of a non-culpable threat to their sovereignty.

**Key words:** international humanitarian law, climate refugees, climate change, human rights, environmental protection, public international law.

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## Problem „uchodźców klimatycznych” w perspektywie międzynarodowego prawa humanitarnego – wybrane zagadnienia

**Streszczenie:** Artykuł jest próbą odpowiedzi na potrzebę znalezienia rozwiązań prawnomiędzynarodowych, niezwykle doniosłych dla ludności zamieszkującej państwa zagrożone konsekwencjami zmian klimatycznych, między innymi skutkami podnoszenia się poziomu wody w morzach i oceanach. W prezentowanym artykule staram się skierować uwagę na niedooceniiany wciąż w prawie międzynarodowym problem tzw. „uchodźców klimatycznych”. Za pojęciem, które wymyka się klasycznym definicjom „uchodźcy”, stoją już dzisiaj setki tysięcy, a niedługo być może miliony ludzi, których życie, zdrowie i własność zostaną zagrożone przez siły natury. Oryginalność podejścia prezentowanego w artykule polega na próbie rozważenia, czy stosownych rozwiązań prawnych, dających ochronę zagrożonej ludności, można poszukiwać na gruncie międzynarodowego prawa humanitarnego, skoro jak dotąd żadna inna gałąź prawa międzynarodowego nie wydawała się odpowiednia, by podjąć to wyzwanie. Pilny i doniosły wymiar omawianych w artykule problemów dopełnia konieczność poszukiwania i znalezienia odpowiedzi na pytania o związki zmian klimatycznych z prawem międzynarodowym publicznym. Chodzi tu o prawne konsekwencje klimatycznej deterytorializacji suwerennych państw takie jak m. in.: status ludności państwa bez terytorium lądowego, utrata terytoriów przez państwa archipelagowe, zmiana układu granic morskich, wód terytorialnych, wyłącznych stref ekonomicznych, czy wreszcie odpowiedzialność państw za zmiany klimatyczne. W kontekście „uchodźców klimatycznych” brakuje wciąż jakiegokolwiek wiążącego aktu prawnego, który wychodziłby naprzeciw potrzeb tysiący osób dotkniętych zmianami klimatu. Powoduje to dysonans, ponieważ ponad wszelką wątpliwość sytuacja, w jakiej się znajdują ci ludzie, rodzi mnóstwo obaw – o własne życie, bezpieczeństwo, zdrowie, itd. Wobec zagrożeń klimatycznych stają dziś całe społeczności, a nawet państwa, które mierząc się z problemem postępującej deterytorializacji klimatycznej, stają wobec ryzyka niezawinionego zagrożenia swojej suwerenności.

**Słowa kluczowe:** międzynarodowe prawo humanitarne, uchodźcy klimatyczni, zmiany klimatyczne, prawa człowieka, ochrona środowiska, prawo międzynarodowe publiczne.

*“Man often seems to see no other meaning in his natural environment than what serves for immediate use and consumption”*

*John Paul II, Encyclical Redemptor hominis, 4 March 1979*

*“Climate change is a global problem with grave implications: environmental, social, economic, political and for the distribution of goods. It represents one of the principal challenges facing humanity in our day”*

*Pope Francis, Laudato Si’, 24 May 2015*

## 1. Introduction

For ages, the dependencies between the natural environment and the humankind have been realised in the lives of both individuals and communities. Man has always tried to tame nature, and, at the same time, seems to be at its mercy, especially in the face of spectacular, sudden and dangerous phenomena, which pose a threat to human life and health.

Experience teaches us that their consequences, such as often the death of tens or even hundreds of thousands of people and huge material losses, place these dramatic events in the context of humanitarian aid and the law, which should define the principles of providing this aid. Such circumstances unavoidably become markedly environmental in their nature if we take account of the impact of climate change.

Obviously, scientists and experts have different opinions on this phenomenon. Regardless of the differences in opinions, climate change is a fact. Irrespective of whether it is considered to be caused by anthropogenic factors or natural processes, the consequences of these phenomena are of objective nature, similarly to the need to bring humanitarian aid in the face of natural disasters. No matter what our opinions on climate change are, today its negative consequences are already forcing the world and science to face the problem of the so-called "climate refugees". The complexity of this issue is proved by the fact that it refers to people who have a very high regard for their history and culture, and for whom migration is of last resort<sup>2</sup>.

## **2. Selected problems of countries and communities exposed to the consequences of climate change**

Very strong emotions which frequently accompany media coverage of the arrival of economic refugees and migrants to Europe are not conducive to finding an effective solution to this problem. There is a serious risk that the international community will gradually lose its natural sensitivity to the needs of people who have to face a real threat of losing their or their loved ones' lives, as well as their properties and sources of income. The United Nations and its offices forecast that as early as in the first half of the 21<sup>st</sup> century there will be millions of environmental migrants in the world, and climate change will be a catalyst of this phenomenon. The World Bank pays particular attention to the need for a well-organised migration programme addressed to the inhabitants of the Pacific island countries being in danger, which would allow to avoid migration forced by climate change in the near future<sup>3</sup>.

The countries which, similarly to the Pacific island countries, are particularly exposed to the consequences of climate change are already calling for international recognition of the phenomenon of migration related to environmental changes. Such migration may cause an increase in tension and conflicts during migration, as well as in migrants' destinations.

The President of Kiribati, a Pacific island country, has already repeatedly appealed to the international community for help in the struggle for survival of the whole population threatened by the ocean flooding its territory.

A similar problem is fought against by another microstate of this region of the world,

<sup>2</sup> B. Doherty, 'Our country will vanish': Pacific islanders bring desperate message to Australia, <https://www.theguardian.com/world/2017/may/14/our-country-will-vanish-pacific-islanders-bring-desperate-message-to-australia> [23.05.2017].

<sup>3</sup> B. Doherty, E. A. Roy, *World Bank: let climate-threatened Pacific islanders migrate to Australia or NZ*, <https://www.theguardian.com/environment/2017/may/08/australia-and-nz-should-allow-open-migration-for-pacific-islanders-threatened-by-climate-says-report> [23.05.2017].

Tuvalu, the authorities of which turned to Australia and New Zealand in 2008 for help in displacing all of its residents. Because of its low elevation, Tuvalu is likely to be deluged over the next fifty years if sea level keeps on rising at the current pace caused by global warming. Other countries already in danger are the Solomon Islands, the Marshall Islands and Vanuatu. Similar processes are taking place not only in the southern Pacific Ocean, but also, inter alia, in the Indian Ocean, where the territory of the Maldives is threatened for the same reasons.

Migration of whole populations affected both by sudden and progressing climate change may increase the risk of political instability and emergence of various conflicts. Until recently, this topic was taken up only to a small extent in the reports of the Intergovernmental Panel on Climate Change (IPCC). The manner of addressing these issues was changed only by the famous report by P. Schwartz and D. Randall, experts working for the Pentagon, which was published in 2003. Although the official position of the then G.W. Bush administration was aimed at minimising the importance of climate change and its causes dependent on human activities, the report, which was kept secret for several months, indicated quite a different scenario, according to which climate becomes unpredictable and refugees fight for limited food and water resources<sup>4</sup>.

When a lawyer from Hamburg, Roda Verheyen, defended her doctoral thesis on the perception of climate change by international law in 2003, nobody took the views presented by her too seriously. At first, Verheyen herself distanced herself from any attempts at indicating those responsible for climate change and the consequent degradation of the environment. The reason was simple: nobody could be incriminated. However, currently, there are more and more lawyers claiming that it is justified to file such suits, and the topic addressed by Roda Verheyen is receiving increasing interest<sup>5</sup>.

### **3. Evolution of views on the phenomenon of "climate refugees"**

It has become possible to change this approach thanks to the involvement of scientists from research centres from all over the world, among whom the scientists from the Law School at the University of the South Pacific located in Vanuatu had a great share in the attainment of this change<sup>6</sup>.

Moreover, life itself has helped people to change their opinions, as the scenario predicted by P. Schwartz and D. Randall very soon proved not to be impossible to be realised<sup>7</sup>.

<sup>4</sup> J.-P. van Ypersele, *Zmiany klimatyczne uderzają w najsłabszych*, [in:] *Zmiany klimatyczne - impas i perspektywy. Punkt widzenia krajów globalnego Południa*, Warszawa 2011, p. 18-19.

<sup>5</sup> R. Verheyen, *Climate Change Damage and International Law: Prevention Duties and State Responsibility*, Leiden: Martinus Nijhoff Publishers 2005.

<sup>6</sup> See: <http://www.usp.ac.fj/index.php?id=6193> [14.03.2017].

<sup>7</sup> P. Schwartz, D. Randall, *An Abrupt Climate Change Scenario and Its Implications for United States National Security*, October 2003, <http://eesc.columbia.edu/courses/v1003/readings/Pentagon.pdf> [01.06.2017].

An event, which was symbolic in this context, took place a week before the Climate Change Conference in Montreal (COP 11), which was held between 28 November and 9 December 2005. It affected nearly one thousand inhabitants of the atoll of Carteret Islands situated in the Pacific Ocean, in Papua New Guinea. For over 30 years, the local people fought against seawater, which devastated their coconut plantations and regularly flooded their houses. On the days preceding the Conference, the people were evacuated to another island in view of climate change, and they were named the first climate refugees. The atoll remained uninhabited, and it has been gradually succumbing to the forces of nature and becoming completely destroyed<sup>8</sup>.

This event shows that displacement of people can be caused by the impact of climate change, and, therefore, it should be classified as "climate migration"<sup>9</sup>.

It has been over thirty years now since the very notion of "environmental refugees" appeared, and over twenty years since Norman Myers published the first of his several warnings about the new type of environment-based migration, which has been occurring in the 21<sup>st</sup> century<sup>10</sup>.

The notion of "environmental refugees" seems to have been used for the first time by Essam El-Hinnawi in one of the publications of the United Nations Environment Programme in 1985<sup>11</sup>.

According to the definition suggested by El-Hinnawi, environmental refugees are those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence or seriously affected the quality of their life<sup>12</sup>. "Environmental disruptions" in this definition are understood as any physical, chemical or biological changes in the ecosystem that render it, temporarily or permanently, unsuitable to support human life.

The proposal of El-Hinnawi is far from the classical definition of the term refugee. In 1936, the Institute of International Law defined refugee as "any person who, because of political events arising in the state of which he is a national, has left or remains outside the territory of that state, has not acquired another nationality and does not enjoy the diplomatic protection of another state"<sup>13</sup>.

This framework determined the way of defining refugees and their status for a number of years. The definition suggested by the Institute was repeated in §6 of the Statute of the Office of the United Nations High Commissioner for Refugees<sup>14</sup>, as well as in Art. 1 of the Geneva Convention of 28 July 1951 Relating to the Status of Refugees<sup>15</sup>.

<sup>8</sup> Zmiany klimatu, „Biuletyn informacyjny Instytutu Ochrony Środowiska” 2005, nr 14/15, p. 12, see: [https://www.mos.gov.pl/g2/big/2009\\_04/3bb2d01fff59a8487cc77f2bcba28f59.pdf](https://www.mos.gov.pl/g2/big/2009_04/3bb2d01fff59a8487cc77f2bcba28f59.pdf) [29.05.2017].

<sup>9</sup> Mary Robinson Foundation – Climate Justice, *Protecting the Rights of Climate Displaced People. Position Paper*, June 2016, p. 3.

<sup>10</sup> N. Myers, *Environmental Refugees in a Globally Warmed World*, "BioScience" 1993, 43(11), p. 752-761.

<sup>11</sup> E. El-Hinnawi, *Environmental Refugees*, United Nations Environment Programme, Nairobi 1985.

<sup>12</sup> W. F. G. Cardy, *Environment and forced migration. A review*, Nairobi 1994, p. 2.

<sup>13</sup> J. Białocerkiewicz, *Prawo międzynarodowe publiczne. Zarys wykładu*, Olsztyn 2005, p. 266.

<sup>14</sup> *General Assembly Resolution 428 (V) of 14 December 1950. Statute of the Office of the United Nations High Commissioner for Refugees*, <http://www.unhcr.org/> [30.05.2017].

<sup>15</sup> *Konwencja dotycząca statusu uchodźców sporządzona w Genewie dnia 28 lipca 1951 r.*, Dz. U. 1991 Nr 119 poz. 515.

Therefore, the definition suggested by El-Hinnawi is in contradiction to the classical understanding of the term “refugee”. Even the High Commissioner gave voice to this by expressing serious reservations regarding its application, as, in his opinion, the international refugee law provides no grounds for this definition, and, what is more, this definition may potentially violate the prevailing legal situation<sup>16</sup>.

Although the UNHCR admits that environmental factors may contribute to the emergence of cross-border migratory movements, it is still of the opinion that they are not the reason for granting refugee status under the international refugee law. However, the High Commissioner acknowledges that there are certain groups of immigrants, which are currently beyond the scope of international protection and which need humanitarian aid<sup>17</sup>.

El-Hinnawi had his share in the gradual evolution of these opinions, and this cannot be questioned, as it was thanks to him that the international community began to pay greater attention to the problem of people affected by the consequences of climate change. Scientists and better-informed decision-makers begin to assign increasing importance to the causes of environmental migration, its legal consequences and its management in the context of future climate threats and the role of migration for broader adaptation processes<sup>18</sup>.

Apparently, it is humanitarian law that has an extremely important role to play in broader adaptation processes. This is favoured by extended definitions of term “refugee”, which appear in documents addressing international protection of human rights adopted by regional organisations.

Such a definition was included in the Convention Governing Specific Aspects of Refugee Problems in Africa, which was adopted in Addis Ababa on 10 September 1969. Pursuant to Art. 1, paragraph 2, apart from those satisfying the conditions of the Geneva Convention, the term “refugee” also means every person who, owing to, inter alia, events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another country<sup>19</sup>.

A rather similar definition of the term “refugee” was adopted in the Cartagena Declaration as of 1984, which defines several categories of refugees, including the so-called “de facto refugees”, i.e. people that cannot be identified as convention refugees, as they frequently have no fear of being persecuted, but, at the same time, cannot return to their homeland for different reasons<sup>20</sup>.

A broader definition of the term “refugee”, somewhat meeting the expecta-

<sup>16</sup> W. Kälin, N. Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change Normative Gaps and Possible Approaches*, UNHCR, Geneva 2012, p. 28.

<sup>17</sup> A. Guterres, *Climate change, natural disasters and human displacement: a UNHCR perspective*, UNHCR Policy Papers, 2009, p. 9, <http://www.unhcr.org/protection/environment/4901e81a4/unhcr-policy-paper-climate-change-natural-disasters-human-displacement.html> [30.05.2017].

<sup>18</sup> R. Obokata, L. Veronis, R. McLeman, *Empirical research on international environmental migration: a systematic review*, “Population and Environment” 2014, 36(1), p. 111-135.

<sup>19</sup> OAU Convention Governing The Specific Aspects of Refugee Problems in Africa Adopted on 10 September 1969 by the Assembly of Heads of State and Government, CAB/LEG/24.3, Art. 1, paragraph 2, [http://www.achpr.org/files/instruments/refugee-convention/achpr\\_instr\\_conv\\_refug\\_eng.pdf](http://www.achpr.org/files/instruments/refugee-convention/achpr_instr_conv_refug_eng.pdf) [31.05.2017].

<sup>20</sup> *Declaración de Cartagena sobre los refugiados*, 22 de Noviembre de 1984.

tions partly related to the consequences of climate change, was included in the Council Resolution of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis. Among several categories of people considered to be refugees, it indicates those who are, or have been, under a direct threat to life and limb and whose protection in their region of origin cannot be secured<sup>21</sup>.

#### 4. Legal aspects of the consequences of contemporary climate change

Among the most spectacular, violent and dangerous phenomena posing a direct threat to human life and health are hurricane winds. They often cause the death of tens or even hundreds or thousands of people, and their consequences are huge material losses, which are difficult to estimate. The environmental context of humanitarian aid is of great importance in this case. It is of particular significance when the violence of environmental changes goes beyond human imagination, and the scale of damage is beyond the capabilities of local authorities and emergency services.

A great number of this type of phenomena, the consequences of which are becoming a challenge for practical applications of international law, occur in the south Pacific Ocean region. Quite recently, on 13 March 2015, the people of Vanuatu severely suffered from the devastating tropical cyclone Pam, which was recognised by this state's authorities as the worst disaster in its history<sup>22</sup>.

Vanuatu is one of the island countries of Oceania, situated in the south Pacific Ocean, with an area of 12,290 km<sup>2</sup>, consisting of 85 island, of which 20 are desert islands. As a result of the cyclone, 24 people lost their lives and a substantial part of the state infrastructure and farmland were damaged, with the inhabitants of around 60 islands being cut off from the world and with no access to drinking water<sup>23</sup>.

In the context of international public law, the case of Vanuatu deserves examination of the relation between the potential anthropogenic nature of climate change and the occurrence of phenomena such as cyclones and their devastating consequences.

The United Nations Framework Convention on Climate Change as of 9 May 1992 defines "climate change" as "(...) a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods"<sup>24</sup>. In turn, the fifth assessment report of the Intergovernmental Panel on

<sup>21</sup> *Council Resolution of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis* (95 /C 262 /01), Official Journal of the European Communities No C262/1, Art. 1(a).

<sup>22</sup> See: <https://www.theguardian.com/world/2015/mar/15/cyclone-pam-death-toll-may-reach-50-in-port-vila-alone-as-full-impact-still-unknown> [14.03.2017].

<sup>23</sup> See: <https://www.theguardian.com/world/2015/mar/16/vanuatus-president-blames-climate-change-for-extreme-weather> [14.03.2017], <http://www.radionz.co.nz/international/pacific-news/268612/state-of-emergency-in-tuvalu> [14.03.2017], <http://www.bbc.com/news/world-asia-31917913> [14.03.2017].

<sup>24</sup> *United Nations Framework Convention on Climate Change*, FCC/INFORMAL/84/Rev.1, United Nations 1992, art. 1.

Climate Change as of 2014 indicates that the probability that it is human activity that has caused global warming is 95%<sup>25</sup>.

Even the researchers who maintain the well understood scientific scepticism believe that the scientific evidence of the anthropogenic nature of climate change is stronger than ever before<sup>26</sup>.

Consequently, it becomes reasonable to ask whether the anthropogenic nature of climate change refers to cyclones in general or the cyclone Pam in particular, as there is no doubt that cyclones have always occurred in the Pacific Ocean region, just like in other parts of the world. The very straightforward claim that climate change is the direct cause of a given cyclone is only an unreliable simplification. However, slightly deeper observations of the environment let us notice certain regularities, which make it much more believable.

Scientists pay attention to three factors, because of which damage caused by cyclones are becoming more severe than a few decades ago. They include high sea surface temperature, increased amount of water vapour in the atmosphere and sea level rise<sup>27</sup>.

The impact of these factors was observed directly before the cyclone Pam hit Vanuatu. While the sea level rise has not been rising any doubts and has not required any special evidence for many years now, with regard to the sea surface temperature, a temperature higher by around two degrees Celsius than the annual average one was recorded in the area of particularly intense activity of the cyclone Pam<sup>28</sup>.

Thus, on the one hand, there is a connection between the tragic consequences of the activity of the cyclone Pam and the climate change caused by increase in the sea surface temperature. On the other hand, the connection between the sea level rise and the tragic consequences of the cyclone in Vanuatu seems to be quite obvious. They would not have been so heavy and harmful if it had not been for climate change<sup>29</sup>.

Similar conclusions can be drawn with regard to the tragic consequences of the cyclone Ian, which, on 11 January 2014, hit a group of the Ha'apai islands belonging to the Kingdom of Tonga<sup>30</sup>.

Humanitarian aid delivered to the victims of climate change in the face of such dramatic events undoubtedly seems to be an obvious reaction resulting from the ethical and moral imperative. However, as every humanitarian crisis, regardless of whether it is caused by the forces of nature or has the anthropogenic hallmarks, poses a threat to respect for human rights in a given territory, it becomes legitimate to search here not only for the signs of the countries' goodwill, but also for personal

<sup>25</sup> *The IPCC's Fifth Assessment Reports: What in it for Small Island Developing States?*, Overseas Development Institute and Climate and Development Knowledge Network 2014, p. 2.

<sup>26</sup> C. Aonima, S. Kumar, *Could Vanuatu claim reparations under international law for damages sustained from cyclone "Pam"?*, "Journal of South Pacific Law" (JSPL) 2015, Vol. 1, p. A23-A40.

<sup>27</sup> A. Friedman, *Vanuatu's president makes a leap in tying Cyclone Pam to climate change*, <http://mashable.com/2015/03/16/vanuatu-cyclone-pam-global-warming/#jvZuC9iGsGqi> [18.03.2017].

<sup>28</sup> *Ibid.*

<sup>29</sup> C. Aonima, S. Kumar, *op. cit.*, p. A-29.

<sup>30</sup> F. I. Fa'anunu, *A Breach of Fundamental Human Rights as the Legal Basis for Reparations for Climate Change Damages and Injuries under International Law: Case Study of Ha'apai Islands (Tonga) Following Cyclone Ian*, "Journal of South Pacific Law" (JSPL) 2015, Vol. 1, p. A41-A58.

rights of every human being. Since the 1970s, a progressing recognition of human rights not only in relation to the environment, but also to climate change has been observed<sup>31</sup>.

In the near future, climate change is going to have a significant impact on sensitive populations. These populations comprise largely indigenous people of small developing island countries, which are exposed to a particular risk of losing their territories because of sea level rise. Therefore, the need for a comprehensive treaty on refugees in the context of climate change is being noticed more and more often<sup>32</sup>. The said threats shall be accompanied by other alarming phenomena, which have already entailed certain legal effects. For the purposes of this study, they shall be called "climate 4D". This euphemism shall be understood as deglaciation<sup>33</sup>, deforestation<sup>34</sup>, as well as desertification<sup>35</sup>, and, above all, deterritorialization<sup>36</sup> threatening the classical features traditionally assigned by the doctrine to the institution of state. On that account, deterritorialization has been receiving increased interest among the international public law scholars, who are beginning to notice its clear relation to climate change<sup>37</sup>.

Consequently, it is justified to ask a number of questions, which at least at present seem to have no answer, and at least until the international community decides to unambiguously settle these issues.

Accordingly, shall a state which has lost its territory in connection with sea level rise lose its legal and international subjectivity? Should the loss of land territory entail the loss of territorial sea? Can a loss of territory by a state through no fault of this state cause its citizens to lose their citizenship? Finally, last but not least, what kind of protection should be provided to "climate refugees" under international law?

<sup>31</sup> *Climate change and human rights*, United Nations Environment Programme 2015, p. 12.

<sup>32</sup> R. Balesh, *Submerging Islands: Tuvalu and Kiribati as Case Studies Illustrating the Need for a Climate Refugee Treaty*, „*Environmental and Earth Law Journal*” Vol. 5: Iss. 1, Article 6, <https://lawpublications.barry.edu/ej/vol5/iss1/6> [09.12.2017].

<sup>33</sup> Deglaciation – a combination of processes leading to the disappearance of ice sheets, see: T. Karpowicz, *Słownik ortograficzny języka polskiego. Rejestr wyrazów występujących w języku polskim*, Warszawa 2006.

<sup>34</sup> Deforestation – destruction of forests; denudation of forests, see: S. Dubisz (ed.), *Uniwersalny słownik języka polskiego*, Warszawa 2003; also defined as: the conversion of forest to other land use or the long-term reduction of the tree canopy cover below the minimum 10 percent threshold, see: FAO Forestry Department, *Global Forest Resources Assessment 2010. Terms and Definitions*, Rome 2010, p. 24.

<sup>35</sup> Desertification – land degradation in arid, semi-arid and dry sub-humid areas resulting from various factors, including climatic variations and human activities, see: *United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa*, A/AC.241/27, 12 September 1994, Art. 1.

<sup>36</sup> Deterritorialization – the loss of links between different social phenomena and a given territory, and decreasing importance of territory as an indicator of state power, see: I. Niżnik-Dobosz, *Państwo w nauce administracji i prawa administracyjnego*, [in:] J. Supernat (ed.), *Między tradycją a przyszłością w nauce prawa administracyjnego*. Księga jubileuszowa dedykowana Profesorowi Janowi Bociowi, Wrocław 2009, p. 505; J. Ciapała, *Wokół pojmowania i wykonywania suwerenności w warunkach członkostwa w Unii Europejskiej – kilka uwag podstawowych, ale czy przekonujących?*, „*Gdańskie Studia Prawnicze*” 2014, T. XXXI, p. 84.

<sup>37</sup> D. R. Bugajski, *Klimatyczna deterytorializacja państwa na przykładzie Tuvalu*, „*Stosunki Międzynarodowe – International Relations*” 2010, No. 1–2 (t. 41), p. 203-219; R. Rayfuse, *W(h)ither Tuvalu? International Law and Disappearing States*, “*University of New South Wales Faculty of Law Research Series 2009*”, Year 2009, Paper 9.

At this stage of contemplation, I find it difficult to refrain from further reasoning aimed at making a presumably clumsy attempt at answering the questions asked above. Nevertheless, out of respect for the rules set by the Publisher, I shall content myself in the last part of this study with introductory inquiries related to the issue of the potential protection which could be provided to “climate refugees” under the international humanitarian law.

## **5. “Climate refugees” – a challenge for international humanitarian law?**

The issues related to environmental protection were addressed for the first time by the United Nations in the 1960s as part of the so-called First Development Decade initiated in 1961. With “climate refugees” not even being mentioned at that time, the issue of state responsibility for the condition of the natural environment was also omitted for many years. It was only during the United Nations Conference on the human environment, which was held in Stockholm between 5 and 16 June 1972, that the first attempt at facing this challenge was made<sup>38</sup>.

From among the 26 principles expressed in the Stockholm Declaration, in the context of international humanitarian law, principle 22 grew in particular importance, providing that: “States shall co-operate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction”<sup>39</sup>.

The question who should pay for the damage caused by climate change, and, above all, who should compensate “climate refugees” for their loss of health and property, which was viewed only in the moral context until recently<sup>40</sup>, has now become extremely topical from a political, economic and legal point of view.

The further development of the issue of “climate refugees” within the framework of international humanitarian law, and, more broadly, within the framework of international protection of human rights, shall require not only the recognition of the complexity of this phenomenon, but, most importantly, the courage necessary to violate the legal status quo.

Exile is still a legal category precisely defined in international documents. Therefore, it would be wrong to apply this term to people forced to leave their country of origin for reasons other than those specified in the Geneva Convention of 1951 and the New York Protocol of 1967, which was to supplement the Convention<sup>41</sup>. Moreover, in the opinion of B. Termiński, it would be inappropriate to use in the current legal

<sup>38</sup> *Declaration of The United Nations Conference on the human environment*, Stockholm, 16 June 1972.

<sup>39</sup> *Report of The United Nations Conference on the human environment*, A/CONF.48/14/Rev. 1, Stockholm, 5-16 June 1972, p. 5.

<sup>40</sup> R.S.J. Tool, R. Verheyen, *State responsibility and compensation for climate change damages – a legal and economic assessment*, “Energy Policy” 2004, no. 32, p. 1109–1130.

<sup>41</sup> *Protokół dotyczący statusu uchodźców, sporządzony w Nowym Jorku dnia 31 stycznia 1967 r.*, Dz. U. 1991 Nr 119 poz. 517.

circumstances the term "environmental refugee", as it may wrongly suggest the existence of a system of international protection for people forced to leave the country of their origin in connection with negative environmental transformations<sup>42</sup>.

The international humanitarian law seems to be one of the natural areas where solutions aimed at analysing the current legal circumstances can be looked for, the gaps regarding the regulation of the legal status of "climate refugees" can be filled in, and where system support schemes can be launched for these people. According to J. McAdam, the answers to the questions and doubts related to this very substantial problem should be searched for, using the achievements of the four branches of international public law, i.e. human rights, refugee law, statelessness issues and international humanitarian law<sup>43</sup>.

The said issues are approached similarly by B. Termiński, who points out that the issues of the legal status, the prospects of international recognition and the forms of humanitarian aid for people displaced for environmental reasons require comprehensive legal and political frameworks. In his opinion, the worst solution is confining the conducted analyses to the division into categories of refugees and internally displaced people. In the opinion of B. Termiński, in order to provide an effective answer to these challenges we should refer to the four categories of international public law: international refugee law, human rights, international environmental protection law and international humanitarian law<sup>44</sup>.

It seems to be insomuch justified as each of these elements of legal protection has an impact on the legal status of refugees. It can be also assumed that the combined application of the all the above-mentioned laws will guarantee full protection to "climate refugees". To prove it, the combined application of international human rights law, refugee protection under humanitarian law and the international humanitarian law is considered as the principle of complementarity, which was confirmed in the San José Declaration on Refugees and Displaced Persons of 1994<sup>45</sup>.

Recognising the deeply humanitarian aspect of the need to protect people who have to face of a number of fears, e.g. of their own security, health, means of support and even of their life, we, in a way subconsciously, focus on and direct our hope towards international humanitarian law.

Although the doctrine differentiates this law from the international human rights law, with the law of war being assumed as the subject of its interest, a highly symptomatic development of this law is being observed, which is aimed at extending the sphere of impact of the standards of humanitarian law not only on internal

<sup>42</sup> B. Termiński, *Kilka refleksji na temat związków migracji międzynarodowych z problematyką międzynarodowej ochrony praw człowieka i przestrzeni polityki społecznej*, "Revista Europea de Derecho de la Navegación Marítima y Aeronáutica", 2014, [https://www.researchgate.net/publication/270506812\\_B\\_Terminski\\_Kilka\\_Refleksji\\_Na\\_Temat\\_Zwiazkow\\_Migracji\\_Miedzynarodowych\\_Z\\_Problematyka\\_Miedzynarodowej\\_Ochrony\\_Praw\\_Czlowieka\\_I\\_Przestrzeni\\_Polityki\\_Spoecznej](https://www.researchgate.net/publication/270506812_B_Terminski_Kilka_Refleksji_Na_Temat_Zwiazkow_Migracji_Miedzynarodowych_Z_Problematyka_Miedzynarodowej_Ochrony_Praw_Czlowieka_I_Przestrzeni_Polityki_Spoecznej) [07.12.2017].

<sup>43</sup> J. McAdam, *Climate Change, Forced Migration, and International Law*, Oxford-New York 2012.

<sup>44</sup> B. Termiński, *Environmentally-Induced Displacement. Theoretical Frameworks and Current Challenges*, Geneva 2012, p. 53.

<sup>45</sup> Regional Refugee Instruments & Related, *San José Declaration on Refugees and Displaced Persons, 7 December 1994*, <http://www.refworld.org/docid/4a54bc3fd.html> [08.12.2017].

conflicts, but also situations requiring humanitarian intervention in peacetime<sup>46</sup>.

This thesis seems to be well-founded, because of as much as the environmental grounds for many armed conflicts, both internal and international ones<sup>47</sup>.

Unfortunately, a certain weakness of the international humanitarian law in the context discussed may be, to a certain extent, quite an artificial distinction between non-international armed conflicts and the situations of internal tensions and turmoil, which are no armed conflicts<sup>48</sup>.

## 6. Conclusion

The complexity of the causes of environmental migration was indicated by F. Cardy, and, in his opinion, they include: extreme natural disasters and industrial accidents, development-induced displacement (e.g. construction of water reservoirs), as well as malnutrition and ill health of certain populations, which may result from the lack of sufficient food resources, use of degraded land and polluted sources of drinking water or even no access to drinking water<sup>49</sup>.

The complexity of factors inducing environmental migration has been, in turn, demonstrated by J. Bogardi, which defined the following three categories: 1) environmentally motivated migrants – people who can leave their deteriorating environment, which, however, can be still reconstructed; 2) environmentally forced migrants – people forced to leave their place of residence because of losing their means of support as a consequence of climate phenomena; 3) environmental refugees – people who are forced to run away from “the worst”, which means life and health-threatening situations<sup>50</sup>.

A person recognised to be a refugee is eligible for international aid and

<sup>46</sup> B. Gronowska and others, *Prawa człowieka i ich ochrona*, Toruń 2005, p. 131-132.

<sup>47</sup> The main axes of the Israeli-Palestinian conflict are usually described as the issues related to the borders of Palestine, Israeli settlements on the West Bank, Palestinian refugees and the division of Jerusalem. However, the issue of access to fresh water, which is one of the key problems to be solved, is brought up very rarely. See: Y. Lacoste, *Woda w świecie. Wielkie wyzwania dla ludzkości*, Wrocław 2003, p. 85-87; In 2006, Syria was hit by the worst drought in its modern history. Because of this drought, around 60% of the crops were devastated, and 80% of farm animals starved to death within four years. As a consequence, over 1.5 million farmers and their families ran away to towns and cities. Nobody claims that the drought or climate change caused by human activities brought about the revolution, but it cannot be denied that the first antigovernmental protests broke out in the first place in the regions most severely hit by the drought, i.e. in Daraa, Damascus, Aleppo, Al-Hasakah Governorate and Qamishli District, see: <https://wiadomosci.wp.pl/wojny-klimatyczne-nadchodzi-nowa-era-konfliktow-zbrojnych-6027704728401025a> [09.12.2017].

<sup>48</sup> T. Jasudowicz, *Prawa człowieka w międzynarodowych konfliktach zbrojnych*, [in:] T. Jasudowicz (ed.), *Międzynarodowe prawo humanitarne we współczesnym świecie – osiągnięcia i wyzwania. Materiały Toruńskiej Konferencji Naukowej 13 grudnia 2006 r.*, Toruń 2007, p. 135.

<sup>49</sup> F. Cardy, op. cit., p. 2-3.

<sup>50</sup> J. J. Bogardi, *Impact of Gradual Environmental Change on Migration: a Global perspective of Trends and Solutions*, Expert Workshop on International Dialogue on Migration. Bangkok, Thailand. 22-23 Feb 2007, [https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/main/site/events/idm/mig\\_env/Bangkok2223February2007/bogardi.pdf](https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/main/site/events/idm/mig_env/Bangkok2223February2007/bogardi.pdf) [01.06.2017]; J. J. Bogardi, *Environmental Refugees: the Forgotten Migrants. Environmental Migration: Flight or Choice?*, Panel Discussion, UN Headquarters, New York, 16 May 2007, [https://proyectoambientales.files.wordpress.com/2011/05/bogardi-2007-environmental-refugees\\_the-forgotten-migrants.pdf](https://proyectoambientales.files.wordpress.com/2011/05/bogardi-2007-environmental-refugees_the-forgotten-migrants.pdf) [01.06.2017].

protection. In the context of environmental refugees, there is still no binding legal act, which would meet the needs and expectations of people affected by climate change. This results in substantial dissonance, as, beyond all doubt, the situation of environmental refugees gives rise to a number of fears, e.g. of their lives, security, health etc. Not only individuals, but also whole communities and small island countries face these threats and the problem of progressing climate deterritorialization, as well as the risk of losing their sovereignty through no fault of their own.

Even if we assume that the world leaders, decision-makers and experts finally acknowledge the existence of different reasons and factors causing environmental migration, and associate them with climate change, it can be hardly expected that this shall change anything in the current international order. To paraphrase the words of the former vice president of the United States, Al Gore, who, after the end of his service, became one of the world's leading activists for counteracting the consequences of global warming, it can be sadly concluded that the truth about climate change is uncomfortable, as it requires a change in our habits and lifestyles, and this should be a very large-scale change<sup>51</sup>.

An outstanding British sociologist, and one of the classics of the contemporary social thought, Anthony Giddens, seems to have confirmed Gore's reflections. In his opinion, a number of problems connected with climate change, and not only the issue of climate refugees, shall not be solved until these threats become tangible, direct or noticeable in everyday life. This characteristic paradox of Giddens has been actually influencing every aspect of the contemporary world's reactions to climate change. Although research proves that the majority of people agree with the fact that this change poses a serious threat, only a small number of them is willing to substantially change their lifestyles in connection with this change<sup>52</sup>.

Unfortunately, "many of us are still of the opinion that the Earth is so big that we, small creatures inhabiting it, are not able to influence our planet's ecosystem"<sup>53</sup>. Assuming that this poignant conclusion is right, I humbly regard this study to be only a small contribution to how an important discussion on the potential role of international humanitarian law in solving the problem of "climate refugees". Being fully aware of the significance, but also of the controversial nature of some of the postulates proposed here, we should hope that this problem shall be also addressed by other researchers, possibly starting a new trend in the development of international humanitarian law, which would, however, require them to take pains to organise and conduct a number of national and international scientific conferences.

<sup>51</sup> A. Gore, *Niewygodna prawda*, Katowice 2007, p. 288.

<sup>52</sup> A. Giddens, *Klimatyczna katastrofa*, Warszawa 2010, p. 10.

<sup>53</sup> A. Gore, op. cit., p. 22.

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