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(UN)RECOGNISED CLIMATE MIGRANTS. THE CASE OF NEW ZEALAND

Abstract

The subject of the study are formal and legal challenges posed by migration caused by climate change. The main reason for consideration is the growing phenomenon of resettlement induced by this process, with the simultaneous lack of regulations protecting incomers. The authors present the current state of protection of climate migrants, initiatives to provide such protection, and the example of New Zealand, which has made an attempt to look for solutions safeguarding climate migrants. The recommendation of the authors of the article clearly points to the need to adopt a definition of a climate migrant in international law.

KEYWORDS

climate change, migration, New Zealand, security

SŁOWA KLUCZOWE

zmiana klimatu, migracje, Nowa Zelandia, bezpieczeństwo

1. INTRODUCTION

Both voluntary and forced migrations are common phenomena. Among their causes, climate change is beginning to play a more and more important role. It increases the frequency of natural disasters, the extent of environmental degradation, sea levels, the melting of glaciers, and the occurrence of weather events (tsunamis, cyclones, earthquakes). Thus, it causes the emergence of climate apartheid experienced especially by citizens of poor countries that are responsible for global warming to a small extent. The described changes may lead to asymmetry in development, deepening and highlighting global inequalities and reducing the level of international and national security, causing conflicts and instability. The prevalence of the described phenomenon is evidenced by estimates according to which climate migrations may cover from 140 to 216 million people by 2050.¹

Migrations caused by climate change are permanent and temporary. They occur within a country (migration from rural to urban areas), between countries (within a continent), and between continents (e.g., from Africa to Europe). They are controlled by the migration policies of individual countries that may significantly limit the mobility of people. Other non-climatic determinants include discrimination against age, gender, religion, origin, conflicts, or wars arising from the struggle for scarce natural resources, and loss of income due to, e.g., long-term droughts and floods. Climate migrants are forced migrants and it is difficult to distinguish them from voluntary ones because migrations are multi-caused and shaped by a number of push and pull factors. It is also difficult to make a distinction between climate and economic migration.

The issue of climate migration discussed in this article prompts the authors to advance theses stating that 1) international solutions to the issue of climate migration do not sufficiently meet the needs of protecting climate migrants today, 2) precise definition of people migrating due to climate change is necessary to grant them international protection, 3) searching for solutions within neighbour-

¹ IPCC, *Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegria, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.), Cambridge, UK and New York, NY, USA, 2022; *Groundswell: Preparing for Internal Climate Migration*, World Bank, Washington 2018, <https://www.worldbank.org/en/news/infographic/2018/03/19/groundswell---preparing-for-internal-climate-migration> (accessed 10 November 2022).

ing countries or regions may be a starting point for further work on universal solutions at the international level. Given the above, it seems reasonable to pose several research questions: What are the prerequisites for adopting international regulations on the rights of climate migrants?, What are the possibilities for climate migrants to apply for international protection under the Geneva Convention?, What are the existing and postulated legal norms protecting climate migrants?, How is the concept of climate migrant defined?, What solutions have been proposed in New Zealand for the protection of climate migrants? In order to prove the theses, an interdisciplinary research approach and methods characteristic of legal sciences (dogmatic method) and political science (decision-making, comparative method) were used. The work is descriptive and explanatory. In the article, 1) the assessment of legal and policy deficits in the field of climate migration is made; 2) gaps in definitions relevant to migration management at the local, regional, and international levels are shown, and 3) the example of New Zealand, which was sued to the UN Human Rights Committee for violation of the right to life in connection with climate change, is cited and analysed.

In this article, the term ‘climate migrants’ instead of ‘refugees’ is used, as this would erroneously imply the existence of international protection for such individuals or groups. Therefore, we refer to this term as people or groups whose mobility is the result of direct and indirect climate change.

2. PROTECTION OF CLIMATE MIGRANTS – OUTLINE OF THE PROBLEM

The UN Human Rights Council has noted in its resolutions that climate change has an impact on the human rights crisis. In one of them, No. 7/23 of 2008, it referred to its negative impact on the right to development. In another, No. 10/4 of 2009, it expanded the catalogue of endangered rights to life, water, food, and health protection.² In turn, in October 2021, the UN Human Rights Council adopted a resolution recognising that everyone has the right to a safe, clean, healthy, and sustainable environment.³ According to the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment, these rights are recognised by more than

² Resolution 10/4, 2009, Human Rights and Climate Change, Human Rights Council, https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_10_4.pdf (accessed 8 December 2022).

³ Resolution 48/13, 2021, The Human Right to a Clean, Healthy and Sustainable Environment, Human Rights Council, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/289/50/PDF/G2128950.pdf> (accessed 8 December 2022).

80% of UN member states.⁴ Only 9 countries, that is Ivory Coast, Cuba, Dominican Republic, Ecuador, Thailand, Tunisia, the Bolivarian Republic of Venezuela, Vietnam, and Zambia, include laws related to climate change in their constitutions.⁵ In turn, 110 countries have some type of constitutional protection of the right to a healthy environment, 101 countries have incorporated it into national legislation, and 126 countries participate in a regional treaty whose subject is safeguarding the right to live in a clean environment.⁶ Defining the concept of a refugee, the Geneva Convention refers to a “well-founded fear of being persecuted”. It provides a closed catalogue of premises constituting the basis for granting international protection. Among them, there are no *expressis verbis* threats caused by climate change. The effects of climate change, therefore, do not fit the definition of persecution under international law. This is confirmed in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status. Paragraph 39 excludes persons who are victims of famine or natural disaster from applying for refugee status unless they can prove persecution for one of the reasons covered by the Convention.⁷ This position is related not only to the fear of undermining the existing legal order in this area but also to extending the mandate to persons whose number would exceed its institutional capacity.⁸ However, another document states that if the effects of climate change coincide with persecution, violence and conflict, then a person can apply for international protection under the Geneva Convention.⁹ Nevertheless, there are some researchers who are in favour of a broad interpretation of Article 1A(2) of the Geneva Convention to cover people who migrate due to climate change,¹⁰ or suggest that refugee status under the Convention is determined not by persecution but by the impossibility to

⁴ *Right to a healthy environment: good practices. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, Human Rights Council, 24 February-20 March 2020, p. 4, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/355/14/PDF/G1935514.pdf> (accessed 15 January 2023).

⁵ *Ibidem*, p. 9.

⁶ *Ibidem*, pp. 22-27.

⁷ *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection. Under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, UNHCR, Geneva 2019, p. 19, <https://www.unhcr.org/publications/legal/5ddfc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.htm> (accessed 6 November 2022).

⁸ B. Docherty, T. Giannini, *Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees*, “Harvard Environmental Law Review” 2009, Vol. 33, p. 359.

⁹ *Strategic Framework for Climate Action*, UNHCR, p. 8, <https://www.unhcr.org/604a26d84.pdf> (accessed 5 December 2022).

¹⁰ J. Robertson, *Climate Change Refugees: the extent New Zealand Law Protects Migrants Displaced by Climate Change*, University of Otago, October 2016, <https://www.otago.ac.nz/law/otago638161.pdf> (accessed 4 November 2022).

return to the country of origin.¹¹ In the opinion of Alexander Heather and Simon Jonathan, a climate migrant must meet three conditions in order to obtain refugee status: 1) not be a citizen of any country, 2) stay outside the country of former residence, and 3) not be able to return to it.¹² The lack of premises connected with climate change in the Geneva Convention may be related to the fact that in 1951, when it was adopted, the effects of global warming were not in the sphere of threats, as is the case today. Therefore, changes in the catalogue of grounds for granting refugee status should be considered.

With a growing population and diminishing resources, climate change is forecast to be the key driver of migration. Water or productive land will become scarce. Integrated actions for sustainable development will be needed. In addition, it will be necessary to prepare an international legal framework for climate migrants so that they can relocate safely. Currently, a deficit in legal regulations in this area can be noticed. It is therefore important for human rights to be at the core of climate change mitigation policies.¹³ Representatives of the Environmental Justice Foundation claim that the legal scheme for the protection of climate migrants should be regulated outside the Geneva Convention. They called upon the international community to work on the legal status of climate refugees.¹⁴ The G20 countries did the same in 2017. They called for the definition of climate migrants to be updated to safeguard their rights and obligations.¹⁵

A group of lawyers from the French University of Limoges prepared a draft Convention on the International Status of Environmentally Displaced Persons.¹⁶ The document defines the basic categories and refers to the rights granted to people displaced because of the environment (Articles 5-10). Lawyers Bonnie Docherty and Tyler Giannini from Harvard Law School also wrote about the need to create a separate act. In their opinion, it could be a part of the Geneva Convention in the form of a separate protocol or the United Nations Framework Convention on Climate Change.¹⁷ A similar proposal was put forward by the Committee

¹¹ A. Heather, J. Simon, 'Unable to return' in the 1951 Refugee Convention. *Stateless Refugees and Climate Change*, "Florida Journal of International Law" 2015, Vol. 26, No. 3, pp. 532-573.

¹² *Ibidem*, p. 571.

¹³ *No Shelter from the Storm the Urgent Need to Recognise and Protect Climate Refugees*, Environmental Justice Foundation, London 2021, p. 3, https://ejfoundation.org/resources/downloads/EJF_Climate-Refugee-Report_2021_final.pdf (accessed 15 November 2022).

¹⁴ *Ibidem*, p. 23.

¹⁵ *Building Global Governance for 'Climate Refugees'*, G20 Germany, 18 March 2017, https://www.g20-insights.org/wp-content/uploads/2017/03/Building_Global_Governance_Climate_Refugees.pdf (accessed 1 November 2022).

¹⁶ M. Prieur, J.-P. Marguenaud, J. Bétaille, B. Drobenko, J.-J. Gouguet, J.-M. Lavieille, S. Nadaud, D. Roets, *Draft Convention on the International Status of Environmentally – Displaced Persons*, "Revue Européenne de Droit de l'Environnement" 2008, Vol. 4, pp. 395-406.

¹⁷ B. Docherty, T. Giannini, *op. cit.*, p. 350.

on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe.¹⁸

The need to regulate legal standards for climate refugees was evidenced by the case of Ioane Teitiot against New Zealand, who accused this country of violating his right to life by forcing him and his family to return to Tarawa (Kiribati atoll).¹⁹ The Human Rights Committee stated in its position that states cannot deport applicants for international protection to countries where climate change infringes on their right to life. No legal violations were found on the part of New Zealand, but I. Teitiot's complaint was upheld, thereby setting a new standard for future applications for international protection on climate grounds. This ruling shows that in practice many climate migrants may not meet the requirements of the principle of *non-refoulement* but may be recognised as refugees. Thus, there is a need to define the rights and protection of people seeking protection, whose lives or the existence of the state are threatened by the climate.

3. DEFINITION OF A CLIMATE MIGRANT

The difficulty in defining the concept of a climate migrant results, among others, from the diversity of situations (the degree of involvement of environmental, political, economic and social factors) of a person or group of people affected by the consequences of climate and environmental change. It is difficult to establish criteria that would be the basis of the definition. The first attempts at creating the definition concerned the term 'environmental refugee'. It was used by Essama El-Hinnawi in a report from 1985. According to him, this term denotes people forced to leave their place of residence or who left it voluntarily to protect life and/or seek a 'better quality of life' as a result of environmental disruption.²⁰ E. El-Hinnawi distinguished three categories of refugees. The first includes peo-

¹⁸ *Environmentally Induced Migration and Displacement: A 21st Century Challenge*, Report Committee on Migration, Refugees and Population, 23 December 2008, p. 23, <https://www.refworld.org/pdfid/49997bbb0.pdf> (accessed 9 October 2022).

¹⁹ M. Kowalski, Sz. Kucharski, "Uchodźca klimatyczny" przed Komitetem Praw Człowieka – czy zachowawcza opinia może być przełomowa? Glosa do opinii Komitetu Praw Człowieka ONZ nr 2728/2016 z dnia 25 października 2019 roku (Ioane Teitiota przeciwko Nowej Zelandii), "Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego" 2020, No. XVIII, pp. 297-312.

²⁰ E. El-Hinnawi, *Environmental Refugees*, United Nations Environment Programme, Nairobi 1985, p. 4, https://tind-customer-undl.s3.amazonaws.com/6f1c6c76-cf94-4d3c-b26f-0f60168cc0d5?response-content-disposition=attachment%3B%20filename%2A%3DUTF-8%27%27UNEP%252802%2529_E52-E.pdf&response-content-type=application%2Fpdf&X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Expires=86400&X-Amz-Credential=AKIAXL7W7Q3XFWDGQKBB%2F20220720%2Ffeu-west-1%2Fs3%2Faws4_request&X-Amz-Signe-

ple temporarily displaced due to environmental stress caused by natural hazards (earthquakes, cyclones, environmental accidents). After it finishes and the environment is restored to its original state, they return home. In the second category of environmental refugees, E. El-Hinnawi included those who, as a result of permanent changes caused ‘usually’ by man, must leave their original place of residence once and for all. The last category of refugees consists of persons or groups of persons who migrate temporarily or permanently, within or outside their own country, in search of a ‘better quality of life’.

Norman Myers is also a supporter of the concept of an environmental refugee. In his interpretation, he emphasised environmental factors: 1) of untypical importance (e.g., droughts, desertification, deforestation), 2) natural disasters (floods, cyclones) and 3) political elements, including ineffective development policy and the system of government leading to economic, political, social and legal marginalisation of people.²¹ He pointed out that these people migrate because they do not have secure sources of income in their place of residence and they have to look for food elsewhere. Stephen Castles is in opposition to E. El-Hinnawi and N. Myers. According to him, the term ‘environmental refugee’ is a simplistic and confusing concept as it implies ‘mono-causality’, which very rarely exists in practice. In addition, this concept uses the term refugee strictly defined in the Geneva Convention, which does not protect people persecuted for environmental reasons.²²

The International Organization for Migration defined the concept of an environmental migrant similarly to E. El-Hinnawi and N. Myers. It indicated that these are “persons or groups of persons who, predominantly for reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad”.²³ In turn, in the report of the Global Humanitarian Forum, its authors referred to the concept of a person “being seriously affected” by climate change. According to them, it is, as in the previous definitions, a person in need of immediate assistance in the context of a weather-related disaster or whose livelihood

dHeaders=host&X-Amz-Date=20220720T072404Z&X-Amz-Signature=083753a16192b0ae38b-da47490412165d61699e5ddb06947d8f50aa713b69044 (accessed 10 October 2022).

²¹ N. Myers, J. Kent, *Environmental Exodus: an Emergent Crisis in the Global Arena*, Washington 1995, p. 18, <http://climate.org/archive/PDF/Environmental%20Exodus.pdf> (accessed 20 October 2022).

²² S. Castles, *Environmental Change and Forced Migration: Making Sense of the Debate*, “New Issues in Refugee Research Working Paper” 2002, No. 70, p. 8.

²³ *Perspectives on Migration, Environment and Climate Change*, IOM, Geneva 2007, p. 2, https://publications.iom.int/system/files/pdf/meccinfosheet_climatechangeactivities.pdf (accessed 20 October 2022).

is significantly compromised.²⁴ Another proposal was put forward by geographer W. B. Wood who used the term ‘eco-migrant’, pushed out both by economic and ecological factors.²⁵

As can be deduced from the above definitions, many terms are used to describe people or groups that migrate due to environmental/climate changes. This discrepancy is related to the fact that work is underway to clarify this term. As indicated by the International Organization for Migration, the UN, and UNHCR, there is a consensus not to use terms related to the refugees, as it may undermine international law concerning them.²⁶ UNHCR is of the opinion that the criteria for granting refugee status in the Geneva Convention should not be extended to include climatic/environmental factors, and therefore considers it unjustified to use the term ‘climatic/environmental refugee’, as it could erroneously suggest that the person has been given international protection under the above convention.²⁷

After the Paris climate conference organised in 2015, hopes for changes in the legal definition of a ‘climate refugee’ surged. However, the position of Louise Arbour, the UN Special Representative on International Migration, dashed them. In March 2018, at the forum of the European Parliament, she stated, among others, that the UN members were not ready to grant legal international protection to climate-related migrants, i.e., to recognise the category of climate migrant as similar to that of a refugee.²⁸

When trying to define the concept of a ‘climate migrant’, it is most often done from the perspective of international migration. However, it should be remembered that a significant part of them, as noted in the report by Christian Aid, will relocate within the country.²⁹ This raises questions about their protection and rights. These persons remain under the jurisdiction of the state which influenced their decision on resettlement by its activity or omission. Their reasons for internal migration are the same or similar to foreign migration. Internally Displaced Persons (IDPs) are not subject to the Geneva Convention. They are defined as “persons or groups of persons who have been forced or obliged to flee or to

²⁴ *The Anatomy of a Silent Crisis: Human Impact Report: Climate Change*, Global Humanitarian Forum, Geneva 2009, p. 9, https://www.preventionweb.net/files/9668_humanimpactreport1.pdf (accessed 20 October 2022).

²⁵ S. Castles, *op. cit.*, p. 9.

²⁶ *IOM Outlook on Migration Environment and Climate Change*, IOM, Geneva 2014, p. 21, 22, 28, https://publications.iom.int/system/files/pdf/mecc_outlook.pdf (accessed 14 October 2022).

²⁷ A. Guterres, *Climate Change, Natural Disasters and Human Displacement: a UNHCR Perspective*, UNHCR 14 August 2009, p. 9, <https://www.unhcr.org/4901e81a4.pdf> (accessed 14 October 2022).

²⁸ V. Chadwick, *Global Compact for Migration not the Answer for Climate Refugees: UN Representative*, 20 March 2018, <https://www.devex.com/news/global-compact-for-migration-not-the-answer-for-climate-refugees-un-representative-92373> (accessed 14 October 2022).

²⁹ *Human Tide: the Real Migration Crisis*, Christian Aid, Dublin May 2007, <https://www.christianaid.org.uk/sites/default/files/2017-08/human-tide-the-real-migration-crisis-may-2007.pdf> (accessed 20 October 2022).

leave their homes or places of habitual residence, in particular, as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border”.³⁰

4. THE CASE OF NEW ZEALAND

New Zealand is the first country in the world where applications for international protection due to climate change were submitted by citizens of Kiribati and Tuvalu (2013-2014). In addition, the New Zealand Green Party proposed the introduction of humanitarian visas for climate migrants (2017). New Zealand was brought before the Human Rights Committee by I. Teitiot for violating his right to life. The applicant objected to his extradition from New Zealand to a home country where climate change infringes on the above right. This was a breakthrough case as it paved the way for the ban on returning climate migrants to their country of origin (2019). In addition to the above arguments for choosing this country for analysis, it should also be noted that, according to Nick King and Aled Jone, New Zealand is a place that does not experience the egregious effects of social collapse caused by the climate, the financial crisis or the pandemic. According to their concept, it is a ‘collapse lifeboat’. It has the greatest potential for survival due to its geothermal and hydroelectric power, agricultural land and low population density. In addition to the above-mentioned country, survival in a situation of global breakdown of societies is also possible in Great Britain, Iceland, Ireland and Australia.³¹

New Zealand is an example of a country that, without waiting for international solutions, has taken action at the national and regional levels to help people affected by climate change. The achievement of this aim is in line with Jane McAdam’s position. The Australian lawyer specialising in the field of climate change and refugees believes that legal issues related to climate change resettlement should be dealt with at the regional level, not internationally. The first proposal better responds to the needs of local or regional communities, taking into account their characteristics as well as cultural, demographic, geographical and political uniqueness.³² However, her adoption of a regional perspective does not

³⁰ *Guiding Principles on Internal Displacement*, Commission on Human Rights, 11 February 1998, p. 5, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G98/104/93/PDF/G9810493.pdf?OpenElement> (accessed 18 October 2022).

³¹ N. King, A. Jone, *An Analysis of the Potential for the Formation of ‘Nodes of Persisting Complexity’*, “Sustainability” 2021, Vol. 13, No. 15, pp. 6-7, 16.

³² J. MacAdam, *Swimming Against the Tide: Why a Climate Change Displacement Treaty is Not the Answer*, “International Journal of Refugee Law” 2011, Vol. 23, No. 1, p. 4.

rule out the other solutions. According to J. McAdam, the argument focusing on local/regional proposals stems from: 1) the nature of displacement, which is predominantly internal, and 2) the erroneous assumption that climate change itself causes migration, it can only have an ‘incremental impact’ and be a multiplier of threats, 3) lack of political will to formulate a new treaty, and in the case of its adoption, problems with its implementation and enforcement, which may not be an easy process.³³ She, therefore, doubts whether an international treaty would be a good solution for all environmental migrants.

New Zealand has many Pacific island states in its vicinity that are sensitive to climate change due to rising water levels, and thus progressive salinization of soils (loss of land for cultivation) or flooding of freshwater sources. These changes also cause tidal floods, storms, tsunamis, ocean acidification and droughts. According to research from 2016, commissioned by the Ministry of Foreign Affairs and Trade of New Zealand, “no atoll group in the Pacific is likely to be habitable by the end of the century”.³⁴ New Zealand is in free association with some of them (Cook Islands, Niue, Tokelau) so their citizens can move freely to New Zealand and have the rights of citizens of this country. On the other hand, there are established migration quotas under the Samoan Quota Resident Visa and Pacific Access Category programmes for citizens of Samoa, Tonga, Tuvalu, Kiribati and Fiji, and thanks to the Recognised Seasonal Employer of 2007 citizens of Fiji, Kiribati, Nauru, Vanuatu, Samoa, the Solomon Islands, Tonga, Tuvalu and Papua New Guinea can be admitted as economic migrants (wine and horticulture industries).³⁵ The above examples testify to special immigration ties linking New Zealand with these countries. They are not only of economic importance but also reduce the pressure on the environment and its resources. Therefore, we can venture to say that New Zealand tries to manage climate migration through economic migration.

New Zealand courts dealing with cases of climate migrants ruled that the Geneva Convention did not apply to them.³⁶ As a result, they rejected applications

³³ *Ibidem*, p. 8, 13, 15-16, 17.

³⁴ M. Manley, J. E. Hay, P. Lal, C. Bennett, J. Chong, J. Campbell, W. Thorp, *Research and Analysis on Climate Change and Disaster Risk Reduction Working Paper 1 Needs, Priorities and Opportunities Related to Climate Change Adaptation and Disaster Risk Reduction in the Pacific Islands Region*, Submitted to New Zealand Ministry of Foreign Affairs and Trade, 30 November 2016, p. 4, <https://www.mfat.govt.nz/assets/Aid-Prog-docs/Research/Climate-Change-and-Disaster-Risk-Reduction-Working-Paper-1-Needs-priorities-and-opportunities.pdf> (accessed 16 December 2022).

³⁵ *Pacific Climate Change Migration and Human Security: Climate Change and Labour Mobility in Pacific Island Countries*, “Policy Brief IOM”, June 2022, p. 6, https://environmentalmigration.iom.int/sites/g/files/tmzbd11411/files/documents/wcms_856083.pdf (accessed 16 December 2022).

³⁶ L. Fiennes, *New Zealand’s Climate Refugee Visa, a Framework for Positive Change: Creating a regional framework of protections for climate migrants from the Pacific*, University of

for protection. According to the data from April 2019, 11 applications for refugee status due to climate change were submitted in New Zealand. None of them was approved.³⁷ The policy towards climate migrants changed in 2017, after the parliamentary elections. During the election campaign, the Green Party, as part of its migration policy, proposed the creation of a humanitarian visa for 100 people per year from the Pacific area forced to resettle due to climate change.³⁸ This need resulted from: 1) the possibility of becoming a global leader in the field of migration policy, taking into account strong relations with the inhabitants of the Pacific Islands, 2) strengthening the position of the nation of New Zealand which has strong values and respects human rights, and 3) launching a fast track of regional assistance for migrants compared to slow international mechanisms.³⁹ Members of the Green Party took the position that the New Zealand immigration system should be “humane, fair, practical, balanced and sensitive to the requirements and concerns of all migrants”.⁴⁰ Their task was also to ensure that immigration legislation included provisions for people displaced due to climate change.⁴¹

In 2017, the Minister for Climate Change, James Shaw, stated that the government would consider introducing a special humanitarian visa for Pacific Islanders displaced as a result of environmental changes (rising sea levels), which was an innovative solution on a global scale. It was to be granted on the basis of “genuine fear of permanent displacement due to environmental change or damage caused by climate change”.⁴² The reasons for this solution were related to: 1) long-term cooperation and ties between New Zealand and the Pacific countries, 2) the region’s common migration history, 3) recognising New Zealanders as a nation of migrants, 4) taking care of one’s own interest, i.e., planning the flow of climate migrants through the visa system, which is a better solution than uncontrolled migration, 5) threats resulting from mass migration (lowering the standard of living, violation of human rights), 6) limiting mass migration, and 7) abiding by

Otago, October 2019, p. 16, <https://www.otago.ac.nz/law/research/journals/otago734244.pdf> (accessed 16 December 2022).

³⁷ L. Walters, *NZ plans for inevitable climate-related migration*, “Newsroom” 24 April 2019, <https://www.newsroom.co.nz/2019/04/24/548955?slug=nz-planning-for-inevitable-climate-related-migration> (accessed 10 December 2022).

³⁸ J. Shaw, *Green Party to welcome 5,000 refugees to New Zealand*, 20 June 2017, <https://www.greens.org.nz/green-party-welcome-5000-refugees-new-zealand> (accessed 16 December 2022).

³⁹ L. Fiennes, *op. cit.*, p. 20.

⁴⁰ J. Shaw, *Green Party to welcome 5,000 refugees to New Zealand*, 20 June 2017, p. 1, <https://www.greens.org.nz/green-party-welcome-5000-refugees-new-zealand> (accessed 16 December 2022).

⁴¹ *Ibidem*, p. 5.

⁴² T. Manch, *Humanitarian Visa Proposed for Climate Change Refugees Dead in the Water*, “Stuff” 29 August 2018, p. 21, <https://www.stuff.co.nz/environment/106660148/humanitarian-visa-proposed-for-climate-change-refugees-dead-in-the-water> (accessed 1 December 2022).

international agreements with the Pacific states.⁴³ According to Leandra Fiennes, the creation of a visa system was more beneficial than changes in the law (immigration law) as it is more flexible than the law and can be adapted to changing needs. Besides, changing legal norms is more time-consuming than altering an existing policy.⁴⁴

Ultimately, members of the Green Party, along with the Labour Party and the Māori Party, which is outside the parliament, supported the idea of introducing visas. The National Party and the New Zealand First Party forming the ruling coalition were against it.⁴⁵ After six months, the New Zealand government withdrew from the proposal. Several reasons for this decision were suggested in the government's documents. The first one was related to the assessment of the need to introduce climate visas. The second was connected with the clarification of the objective reasons underlying the granting of the visa, i.e., changing the wording from 'genuine' to 'well-founded' fear. The next ones concerned the formulation of 'culturally balanced policies' (so that migrants do not lose contact with their culture) and the establishment of the goals of the new visa and immigration policy to increase the effectiveness of migration from the Pacific region (while protecting native labour markets, maintaining security and minimising the risk).⁴⁶ It was also influenced by the aversion of the addressees themselves to the above visa and migration in general, which is a last resort for them. They called upon the New Zealand government to reduce carbon dioxide emissions (to ensure that they can stay at home), demanded support in adapting to climate change and thus enabling people at risk to stay in their homelands or provide them with legal migration paths in a crisis situation, avoiding the stigma of a refugee status *per se* (while maintaining the concept of the policy of 'migration with dignity' that is a part of the voluntary migration strategy by Anote Tong, a former president of Kiribati).⁴⁷ The term 'refugee' was perceived negatively by the inhabitants of Kiribati and Tuvalu because it was associated with helplessness and regarding oneself as a passive victim.⁴⁸ In addition, as highlighted in a government document from 2018, "the Pacific Island countries and communities have no wish to relieve the

⁴³ *Ibidem*, pp. 25-27, 32-35.

⁴⁴ *Ibidem*, p. 43.

⁴⁵ J. Shaw, *op. cit.*, p. 20.

⁴⁶ *Ibidem*, p. 24, 37.

⁴⁷ O. S. S. Eyles, *Climate Migration and Kiribati: Discourse, Development and New Zealand's Role in the Pacific*. New Zealand NGO, Government, and I-Kiribati Perspectives, University of Otago, December 2020, pp. 53-54, <https://ourarchive.otago.ac.nz/bitstream/handle/10523/12202/EylesOlivia2020MA.pdf?sequence=1&isAllowed=y> (accessed 19 December 2022); Dempster H., Ober K., *New Zealand's "Climate Refugee" Visas: Lessons for the Rest of the World*, "Center for Global Development", 10 January 2020, <https://www.cgdev.org/blog/new-zealands-climate-refugee-visas-lessons-rest-world> (accessed 19 December 2022).

⁴⁸ J. McAdam, *Climate Change, Forced Migration, and International Law*, Oxford 2012, p. 40.

international community of its obligations and commitments to global action to reduce emissions by accepting large-scale migration [...] as a solution”.⁴⁹ In view of the above, new solutions were proposed, consisting in: 1) using Official Development Assistance programme to prevent, delay or prepare resettlement caused by climate change, 2) holding regional dialogue through the Pacific Island Forum for the development of international law protecting Pacific Islands states in the face of rising sea levels.⁵⁰ In the proposed action plan, the government decided to postpone the introduction of humanitarian visas until 2024, “when the scale and potential effects of climate migration in the Pacific region become more prominent”.⁵¹

In order to improve the climate change visa regime proposed in 2017, it was suggested to focus on objective reasons (‘legitimate concerns’), abandoning the subjective factor. In addition, it was recognised that the system should be reviewed annually in order to increase its effectiveness. If the scheme was successful, an increase in the number of granted visas would be assumed.⁵² The proposed changes also included solutions concerning: 1) focusing on the countries at the greatest risk, i.e. Kiribati and Tuvalu, and in the future revising the list, supplementing it as necessary (every 5 years), 2) abandoning the phrase ‘climate refugee’ and thus changing the visa name into the Pacific Climate Migration Visa.⁵³

Moving away from the idea of granting humanitarian visas, New Zealanders have taken a number of other actions. They resulted from the change in foreign policy towards the Pacific region initiated by the government of Prime Minister Jacinda Ardern in 2018. This initiative, known as the ‘Pacific Reset’, subordinated mutual relations to understanding, partnership, sustainable development and respect.⁵⁴ The new foreign policy provided for an increase in funds for activity in this area, the establishment of new institutions and diplomatic posts, and the signing of bilateral declarations of partnership, i.e. the strengthening of mutual relations in order to overcome strategic challenges in the region by means of soft diplomacy.⁵⁵ It moved away from migration in favour of adapting threat-

⁴⁹ Minister of Foreign Affairs, *Pacific Climate Change-Related Displacement and Migration: a New Zealand Action Plan*, Wellington 2018, p. 4, <https://apo.org.au/sites/default/files/resource-files/2018-05/apo-nid213946.pdf> (accessed 7 December 2022).

⁵⁰ *Ibidem*, p. 1.

⁵¹ *Ibidem*.

⁵² L. Fiennes, *op. cit.*, pp. 37-38.

⁵³ *Ibidem*, pp. 38-39.

⁵⁴ A. Powles, *Identity, National Security and Influence: The ‘Pacific Reset’ and Shaping New Zealand’s Relations with the Pacific Islands*, “Development Bulletin” 2021, No. 82, pp. 32-36, https://pacificsecurity.net/wp-content/uploads/2021/10/DB82_Part6.pdf (accessed 8 December 2022); *Case Study: the Pacific Reset - a Year On*, <https://www.mfat.govt.nz/en/about-us/mfat-annual-reports/mfat-annual-report-2018-19/case-study-the-pacific-reset-a-year-on/> (accessed 8 December 2022).

⁵⁵ S. Mark S., *New Zealand’s Public Diplomacy in the Pacific: a Reset, or More of the Same?*, “Place Branding and Public Diplomacy” 2022, Vol. 18, pp. 105–112.

ened areas to further life. One of the ideas is a project in Kiribati's Temaiku Bay to reclaim a 300-hectare wetland area by raising it 2 meters above the projected future sea level (in 2200).⁵⁶ The project implementation is supposed to last 30 years. The adoption of a new foreign policy also resulted in the preparation by the New Zealand Ministry of Business, Innovation and Employment of the "Migration Policy in the Pacific Region" in May 2018. Its purpose was to: 1) create the right conditions for the policy of temporary migration and residence to meet the needs of the population, 2) minimise the risk of exploitation of incomers, and 3) recognise climate change displacement in the Pacific "where appropriate".⁵⁷

Although the special programme of humanitarian visas due to climate change has not been implemented, New Zealand was the first country to propose such a solution. The idea was praised internationally, although the government was warned against pressure from people fleeing disasters not directly related to climate change. Nina Hall from Johns Hopkins University considered the discussed solution to be praiseworthy, especially in the period of tightening borders by Western countries.⁵⁸

The proposed visa, and then the new migration policy towards the Pacific, stemmed from New Zealand's responsibility for the above region, its cultural and historical ties with this area and its population, as well as the pursuance of strategic interests and confirmation of its position in the region. They were also a compromise towards the Pacific states. The above approach resulted from the implementation of the partnership policy and involvement in the 'Pacific Reset'. The case of New Zealand demonstrates the importance of a regional/local approach to solving climate change problems. It shows the need to respect and understand the perspective of the countries at risk and their citizens, as well as the fact that migration can be the last resort.

⁵⁶ L. Walters, *New Plan Gives Pacific People Chance to Stay Home*, "Newsroom" 30 April 2019, <https://www.newsroom.co.nz/groundbreaking-project-gives-pacific-people-chance-to-stay-in-their-homeland> (accessed 3 January 2023).

⁵⁷ Ministry of Business, Innovation & Employment, *Final Cabinet Paper – Proposed Immigration Work Programme to Improve Pacific Migration Policies*, 15 May 2018, p. 5, <https://www.mbie.govt.nz/assets/897e7e39bc/final-cabinet-paper-proposed-immigration-work-programme-to-improve-pacific-migration-policies.pdf> (accessed 3 January 2023).

⁵⁸ J. Pearlman, *New Zealand Creates Special Refugee Visa for Pacific Affected by Climate Change*, "The Straits Time" 9 December 2017, <https://www.straitstimes.com/asia/australianz/new-zealand-creates-special-refugee-visa-for-pacific-islanders-affected-by-climate> (accessed 3 January 2023).

5. CONCLUSION

The climate crisis is a universal phenomenon, but its negative consequences do not affect various social groups, countries, or regions to the same extent. It is a challenge to prepare countries and the international community for the growing phenomenon of climate migration. Most countries and international institutions are not ready for it. Currently, there is a deficit of policies and legal frameworks that take account of climate change as a driving force of migration. A conceptual sphere needs to be developed that would clearly define who a climate migrant is and would indicate objective premises on the basis of which it could be concluded that the decision to migrate was caused by climate change. This is extremely important for the preparation of legislation protecting these migrants, of a coherent policy and various forms of assistance to countries affected by climate change and those hosting migrants. Perhaps the starting point are changes at the national and regional level, as it is easier to introduce them than at the international one. Implementation of the above modifications can protect modern societies from a humanitarian crisis caused by environmental degradation. Moreover, thanks to the planned changes, the adverse effects of migration caused by climate change can be mitigated. The way we deal with it will be crucial to the intensity and course of conflicts or unrest.

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