

## CLIMATE CHANGE AND MIGRATORY FLOWS\*

1. Introduction - 2. The role of the UN Human Rights Committee - 3. Protection of climate migrants in the European context - 4. The example of Sweden and Finland - 5. Conclusions

### Abstract

La migrazione derivante dal degrado ambientale e mutamenti climatici è condizionata anche dalle politiche di intervento e dai fondi erogati. L'Unione europea, insieme alle principali potenze europee, deve intraprendere un'azione preventiva per garantire che gli sfollati ambientali ricevano una protezione adeguata quando arrivano in Europa. Probabilmente gli Stati membri continueranno a rifiutarsi di agire unilateralmente perché non vogliono esporsi ai costi finanziari, amministrativi e culturali derivanti dall'accoglienza di un numero di rifugiati superiore a quello dei paesi limitrofi. L'obiettivo generale dell'elaborato è quindi quello di inquadrare in una prospettiva di tipo normativo il tema delle migrazioni influenzate dagli effetti negativi del mutamento climatico.

Migration resulting from environmental degradation and climate change is also conditioned by intervention policies and funding. The European Union, together with the major European powers, must take preventive action to ensure that the environmentally displaced persons receive adequate protection when they arrive in Europe. Member states will probably continue to refuse to act unilaterally because they do not want to expose themselves to the financial, administrative and cultural costs of hosting a larger number of refugees than their neighbours. The overall objective of the paper is therefore to frame in a normative perspective the topic of migration influenced by the negative effects of climate change.

Keywords: Environmental Refugee, Human Rights Committee, European Union, Sweden, Finland.

### 1. Introduction

The reading of the poem *Laudes Creaturarum* by S. Francesco d'Assisi inspired the choice of this essay, through a positive vision of the nature and creative force of man, of the greatness of creation as an instrument to search for good brotherhood among peoples.

In this regard, we quote some passages from the Antonianum Guide XCII (2017) 389-438. As Pope Francis emphasized, the environmental issue is fundamentally a human issue and, in order to achieve the transition from despotic domination to the care and custody of the garden, it is

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\* The present contribution recalls some of the topics dealt with in the report prepared for the World Day of Human Rights on 12 December 2022 by the Centre for Legal Economic Research (CREG) of the University of Rome Tor Vergata, with the participation of the Idos Study and Research Center, the San Pio V Institute.

urgent to start genuine training programmes. These must be suitable to promote a new culture, aimed at a sense of inter-generational responsibility and full belonging to creation. Indeed, the imminent 'revolution' to which humanity is invited is that of sustainability. It does not only involve structural changes, but rather: it is humanity that needs to change. There is a lack of awareness of a common origin, of mutual belonging and of a future shared by all. This basic awareness would allow the development of new beliefs, new attitudes and lifestyles. Thus a great cultural, spiritual and educational challenge emerges which will involve long processes of regeneration (LS 82).

Today the analysis of environmental problems is inseparable from the analysis of human, family, work, urban contexts, and the relationship of each person with himself, which generates a certain way of relating to others and the environment. There is an interaction between ecosystems and between different social reference worlds, and so it is shown once again that «the whole is superior to the part».

Consequently, the environment belongs to the individual «individually and collectively»; the connection between the interest of the individual and the interest of the community is inseparable and protection is direct because the integral environment is protected as a single, individual and collective interest at the same time<sup>1</sup>.

In this regard, Pope Francis on the occasion of the solidarity event on the 30<sup>th</sup> anniversary of the Central American integration system held in Costa Rica on June 10, 2021, recalled «the principle of the centrality of the human person, calling on states to guarantee the personal safety and access to basic services of migrants, asylum seekers and refugees».

In particular, he stressed the importance of adopting specific international mechanisms that give concrete protection and recognize the «often invisible drama» of internally displaced persons, who are relegated to the background of the national political agenda. Such measures must be accompanied by regional policies to protect our Common Home aimed at alleviating the impact of both climatic phenomena and man-made environmental disasters in their land grabbing, deforestation and water appropriation<sup>2</sup>.

The contribution thus tends to explain how Global Justice, Global, International and

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<sup>1</sup> The Encyclical of POPE FRANCIS, *Laudato Si'*, Bologna, 2015, p. 147, ff., in which we read the change in the global development model implies «reflecting responsibly on the meaning of the economy and its purpose, to correct its dysfunctions and distortions».

<sup>2</sup> Message of the Holy Father Francis on the occasion of the solidarity event on the 30<sup>th</sup> anniversary of the Central American Integration System, Costa Rica, June 10, 2021 (<https://www.vatican.va/content/francesco/it/messages/pont-messages/2021/documents/20210605-sica.html>).

National Policies can be very useful both in solving behavioural factors at the origin of ‘environmental’ migration and in providing elements for the construction of sustainable strategies in line with fundamental human rights. Migration resulting from environmental degradation and climate change is also conditioned by intervention policies and funding<sup>3</sup>.

Well, including specific cases of inhabitants at risk of migration from some ‘Small Island Developing States’ (hereafter SIDS), and in particular from island territories with a high risk of submergence, it intends to focus attention on international issues, such as those related to ‘environmental’ migrants, that still need to be resolved in relation to global challenges in the field of migration.

Within the current discussion on environmental migration, scientific knowledge including the uncertainty factor, the global political will, the regulatory strategies for possible ‘adaptation’ solutions, the economic resources at stake, represent a good degree of information given also by the media, in order to obtain a correct interpretation of the phenomena.

The general objective of the paper is to frame, from a regulatory perspective, the issue of migration influenced by the negative effects of climate change.

Migration flows are partly generated by processes of environmental degradation, floods, rising sea levels, drought and desertification that force populations to leave their countries and resettle in other areas.

The countries most affected by climate change, such as desertification, sea level rise and flooding, are located in South and East Asia, Sub-Saharan Africa and the Pacific Islands. The coasts of South and South-East Asia are mainly subject to hurricanes, floods, especially states such as Bangladesh, the Philippines and countries dependent on monsoon movements. Sub-Saharan Africa is subject to extreme heat, drought and desertification, leading to shortages of water and basic necessities to sustain the population. Finally, small island states in the Pacific are vulnerable to rising sea levels<sup>4</sup>.

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<sup>3</sup> P.R. SHUKLA, J. SKEA, E. CALVO BUENDIA, V. MASSON-DELMOTTE, H.-O. PÖRTNER, D.C. ROBERTS, P. ZHAI, R. SLADE, S. CONNORS, R. VAN DIEMEN, M. FERRAT, E. HAUGHEY, S. LUZ, S. NEOGI, M. PATHAK, J. PETZOLD, J. PORTUGAL PEREIRA, P. VYAS, E. HUNTLEY, K. KISSICK, M. BELKACEMI, J. MALLEY, *Climate Change and Land*, IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems, 2019, pp. 18-32; 201-203 (<https://www.ipcc.ch/srccl/download/>).

<sup>4</sup> A.A. CANÇADO TRINDANE, C. BARROS LEAL, *Diritti Umani e Ambiente*, Fortaleza, 2017, pp. 11-23; D. CRISTIANE, *Rifugiati ambientali*, in *Dicionário de Direitos Humanos*, 2011 (<http://www.esmpu.gov.br/dicionario/tiki-index.php?page=Refugiado+Ambiental>).

As a result, climatic migratory flows consist of people fleeing areas that have become uninhabitable, and areas repopulated for better environmental conditions.

Changing climatic conditions cannot be overlooked in comparison with other political, cultural and economic factors in managing migration flows.

We must not confuse environmental refugees with environmental displaced persons, those who remain within their own country without crossing international borders, which is not the subject of this study<sup>5</sup>.

While we certainly look at global warming, global pollutants and poverty as priority issues to be resolved in the global challenges, we should also generally relate to a more global idea of possible induced migration approaches, which are positive if shared and planned even in the integration phase, but often negative if more.

It is certainly fascinating and risky to speculate on the future of the globe, but at the same time there is an increasingly urgent need to tackle environmental problems by transforming strategic objectives into concrete actions that tend to ensure effectiveness.

The general objective of the paper is therefore to frame, in a normative perspective, the theme of migration influenced by the negative effects of climate change<sup>6</sup>.

The aim is to bring out the importance of specific Conventions, multilateral agreements, the possible positive repercussions on the identities or resilience of people living in these particular geographical areas: planning a possible shared and participated migration, ensuring a degree of integration to these particular communities in the destination territories, verifying if the migration, in other islands or States, is sustainable<sup>7</sup>.

## 2. The role of the UN Human Rights Committee

According to the doctrine, the negative effects of climate change in the absence of sustainable strategies, effective mitigation and adaptation programmes, could widen existing vulnerabilities increasing the degree of conflict, internally destabilizing states, even the destination countries of

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<sup>5</sup> H. VALENCIA VILLA, *Diccionario Spada Derechos Humanos*, Madrid, 2003, p. 143.

<sup>6</sup> T. TIETENBERG, *Environmental Economics and Policy*, New York, 2004; P. IAFRATE, *Captured within borders: the case of internally displaced persons and its impact on human rights*, in CENTRO STUDI E RICERCHE IDOS, *Ospiti indesiderati. Il diritto d'asilo a 70 anni dalla Convenzione ONU sui Rifugiati*, Roma, 2022, pp. 90-94.

<sup>7</sup> B. COMMONER, *The Closing Circle: Nature, Man and Technology*, New York, 1972, p. 8.

environmental migrants. Therefore, the traditional mode of conflict resolution should be considered based on the link between environment, development and security. In 2004 the Security Council<sup>8</sup> held an interesting meeting on this issue, and in 2009, the General Assembly approved a Resolution on «Climate Change and its possible security implications». In this context, the role and competence of the UN Security Council is raised to decide what measures shall be taken to maintain or restore international peace and security (Art. 39 of the Charter). In concrete terms, it is feared, however, that a broader mandate could extend the influence of the Security Council in specific internal policies; moreover, it is presumed that the Council should suffer from a lack of legitimacy, as the five permanent members produce the largest amount of greenhouse gases.

The United Nations High Commissioner for Refugees, in *Climate Change, Disaster and Displacement in the Global Compacts: UNHCR's Perspectives* (2017)<sup>9</sup> and the *Global Compact on Refugees* (2018, § 63)<sup>10</sup> highlights the need to ensure protection for people who are beyond the borders of their own state on the occasion of and/or due to the effect of climate change and natural disasters, through the use of complementary protection mechanisms also regulated by domestic law. The legal framework for displaced persons in such contexts goes further, considering that «a person fleeing such circumstances may often qualify as a refugee under the 1951 Convention definition, in line with UNHCR's interpretative guidance» and stating that regardless of regional international protection systems a person fleeing *such circumstances* is still considered a refugee according to the UNHCR mandate.

On this point, it is worth recalling an interesting UN Special Procedure on Climate Change and Human Rights of 4 October 2021<sup>11</sup>, in which the Human Rights Council, recalling Council Resolution 47/24 of 14 July 2021, appointed a Special Rapporteur with which the latter encouraged the creation of a new Special Procedure to assess the negative impact of climate change on the full and effective enjoyment of human rights. Among the tasks entrusted to the latter is the

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<sup>8</sup> UNEP-SOPAC, *Building Resilience in SIDS. The Environmental Vulnerability Index*, 2005.

<sup>9</sup> UNHCR, *Climate change, disaster and displacement in the Global Compacts: UNHCR's perspectives*, November 2017 (<https://www.refworld.org/docid/5a292d2c4.html>).

<sup>10</sup> Global Compact on Refugees, United Nations, New York, 2018 (<https://www.unhcr.org/5c658aed4.pdf>).

<sup>11</sup> Human Rights Council Forty-eighth session 13 September-8 October 2021 Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development (<https://undocs.org/a/hrc/48/l.27>); P. IAFRATE, *L'impatto del cambiamento climatico sui flussi migratori nel Mediterraneo*, in questa *Rivista*, 2022, fasc. 1, pp. 107-123.

strengthening of human rights protection, legislation and policies addressing climate change<sup>12</sup>. The Committee recently intervened in a similar case concerning a joint complaint filed by eight Australian citizens and six of their children. They are all inhabitants of Boigu, Poruma, Warraber and Masig, four small low-lying islands in Australia's Torres Strait region. The inhabitants claimed that their rights had been violated because Australia had failed to adapt to climate change by, among other things, improving sea walls on the islands and reducing greenhouse gas emissions.

In this regard, the Committee found that Australia's failure to adequately protect Torres Strait Islanders from the negative impacts of climate change violated Article 6 of the International Covenant on Civil and Political Rights (1966), namely the rights of Torres Strait Islanders to enjoy culture and family life. Consequently, the Committee called on Australia to compensate the islanders for the damage suffered, engage in meaningful consultations with their communities to assess their needs, and take measures to continue to ensure the safe existence of the communities on their respective islands<sup>13</sup>.

In other words, the aforementioned resolution stipulates that countries may not deport individuals who face climate change-induced conditions that violate the right to life; and calls on states to consider the risk of climate change-induced violations of the right to life as part of their return decisions, in particular the activation of non-refoulement obligations.

After all, the human rights approach followed at international level should also be adopted by the European Union, given the value of fundamental rights in that system.

### 3. Protection of climate migrants in the European context

At the European level there is no specific legislation to protect environmental migrants, and in particular they are not included in the Common European Asylum System.

In particular, Directive 2001/55/EC 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

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<sup>12</sup> M. SCOTT, *Natural Disasters, Climate Change and Non-Refoulement: What Scope for Resisting Expulsion under Articles 3 and 8 of the European Convention on Human Rights?*, in *International Journal of Refugee Law*, vol. 26, Issue 3, October 2014, pp. 404-432.

<sup>13</sup> Australia-Torres Strait Islands Case, 22 september 2022, Human Rights Committee views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019 ([https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f135%2fD%2f3624%2f2019&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f135%2fD%2f3624%2f2019&Lang=en)).

between Member States in receiving such persons and bearing the consequences thereof does not regulate the protection of environmental migrants who are not included in the category of displaced persons<sup>14</sup>. Principally, Article 2 of the directive under consideration defines displaced persons as: third country nationals or stateless persons who have had to leave their country or region of origin or who have been evacuated, in particular in response to an appeal by international organisations, and whose return in safe and stable conditions proves impossible owing to the situation in the country itself, including those falling within the scope of Article 1A of the Geneva Convention or other national or international legislation granting international protection, and in particular (i) persons who have fled areas of armed conflict or endemic violence; (ii) persons who are subject to a serious risk of, or have been the victims of, systematic or generalised violations of human rights; (d) mass influx shall mean the arrival in the Community of a considerable number of displaced persons, from a particular country or a particular geographical area, whether their arrival is spontaneous or facilitated, for example through an evacuation programme; (e) refugees means third-country nationals or stateless persons within the meaning of Article 1A of the Geneva Convention.

Temporary protection can therefore be well linked to the migratory flows generated by environmental disasters, because of the mass exoduses sometimes caused by the arbitrariness of European and national policy.

In particular, Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons would leave a wide margin for manoeuvre due to the presence of open definitions such as, for example, that of mass influx, defined by the directive as the arrival in the EU of a large number of displaced persons from a particular country or geographic area, whether their arrival is without any facilitation or through an evacuation programme.

In this case, the directive could be interpreted broadly to include those fleeing for reasons related to environmental disasters. Temporary protected status in circumstances such as droughts, floods, epidemics or earthquakes, if the home state cannot ensure safe living conditions for its citizens can be one of the solutions to environmental challenges.

However, this form of protection was never implemented before the conflict in Ukraine

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<sup>14</sup> Directive 2001/55/EC Council Directive 2001/55/EC of 20 July 2001.

(adopted on 4 March 2022 to offer immediate protection to people fleeing Ukraine for a duration of one year renewable up to a maximum of two)<sup>15</sup> because the European Council never decided by qualified majority, not even in the case of the civil conflicts in 2011 in Syria, Iraq and in 2021 in Afghanistan, which led to huge migratory flows into Europe.

As can be seen from a reading of the Temporary Protection Directive, the definition of ‘mass influx’ does not include environmental disasters and climate change as original causes.

It therefore seems appropriate to amend the directive and include those fleeing for environmental reasons among the beneficiary categories.

In 2010, the issue of climate and migration was addressed in the Stockholm Programme<sup>16</sup>, An open and secure Europe serving and protecting citizens (2010/C 115/01), in which the European Council asked the Council and the Commission to: define a comprehensive EU internal security strategy inspired, in particular, by: the need for a horizontal and cross-cutting approach to deal with complex crises or natural or man-made disasters, etc.; the need for a comprehensive approach to deal with complex crises or natural and man-made disasters, etc.; the need for a cross-cutting approach to deal with complex crises or natural and man-made disasters, etc.; and the need for a cross-cutting approach to deal with complex crises or natural and man-made disasters. Subsequently, the European Commission drafted a study called «Climate Change environmental degradation» in which it noted the absence of international and European legislation to protect climate migrants. In particular, the document underlines the importance in the conclusions of adopting a policy based on knowledge, dialogue and cooperation, in order to address at European level the phenomenon of environmental migration through development policies and humanitarian aid.

In particular, the paper stresses the importance of integrating climate change adaptation (and mitigation, where appropriate) into national sustainable development strategies, linking disaster risk reduction, disaster risk management and climate change adaptation strategies, and considering the inclusion of the migration dimension in existing instruments, such as National Adaptation

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<sup>15</sup> Decisions Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (<https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:32022D0382&from=EN>).

<sup>16</sup> EUROPEAN COUNCIL, *The Stockholm Programme. An open and secure Europe serving and protecting citizens*, in *Official Journal of the European Union*, 5 May 2010, C115, p. 1 ([https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:52010XG0504\(01\)&from=P](https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:52010XG0504(01)&from=P)).



Programmes of Action, Poverty Reduction Strategy Papers and United Nations Development Assistance. Well, the Common European Asylum System (CEAS) does not provide for a form of protection of environmental migrants, but contains rules on the attribution to third country nationals or stateless persons of the status of beneficiary of international protection, on a uniform status for refugees or for individuals who can benefit from subsidiary protection, provided for by the Qualification Directive 2011/95/EU<sup>17</sup>.

In the absence of a legal provision also including those fleeing for climatic reasons, despite the substantial amendments made to Council Directive 2004/83/EC of 29 April 2004, Directive 2013/32/EU of 26 June 2013 (the so-called Asylum Procedures Directive), on the establishment of common procedures for granting and withdrawing international protection), by the Qualification Directive 2011/95/EU of 13 December 2011 on uniform status for refugees or for persons eligible for subsidiary protection, as well as the content of the protection granted (recast); or on the qualification of third-country nationals or stateless persons as beneficiaries of international protection, on a uniform status for refugees or for persons eligible for subsidiary protection, and on the content of the protection granted, referred to in Article 2(2)(b) of Directive 2004/83/EC. 2(f) gives the following definition (f) gives the following definition of a beneficiary of subsidiary protection «a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and who is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country», did not include environmental migrants among the possible beneficiaries.

However, the study *Climate refugees. Legal and policy responses to environmentally induced migration*, carried out in 2011 at the request of the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament (PE 462.422) by the International Centre for Migration Policy Development (ICMPD), emphasised the need to include environmental disasters among the causes that could justify the recognition of subsidiary protection «in addition to armed conflict,

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<sup>17</sup> EUROPEAN PARLIAMENT, *Climate Change and Migration. Legal and policy challenges and responses to environmentally induced migration*, 2020 ([https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655591/IPOL\\_STU\(2020\)655591\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655591/IPOL_STU(2020)655591_EN.pdf)).

also environmental disaster»<sup>18</sup>.

The European Commission in its communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *The European Green Deal* of 11 december 2019<sup>19</sup> explicitly recognises the relationship between environmental factors and migration in the part that highlights that environmental and climate challenges increase the instability and vulnerability of individuals, thus renewing the European commitment to working with third countries to prevent forced migration and population displacement.

Subsequently, in 2020<sup>20</sup>, the proposal of the new immigration and asylum pact also establishes that immediate protection can only be granted, on the basis of an implementing act by the Commission, to «displaced persons from third countries exposed to a high risk of indiscriminate violence, in exceptional situations of armed conflict, who are not in a position to return to their country of origin»<sup>21</sup>.

Of particular relevance in 2021 is the European Parliament resolution of 19 May on the effects of climate change on human rights and the role of environmental defenders in this context (2020/2134(INI))<sup>22</sup>, which recognises the impact of the link between climate change,

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<sup>18</sup> ID., “*Climate Refugees*”. *Legal and policy responses to environmentally induced migration*, Committee on Civil Liberties, Justice and Home Affairs of the European Parliament (PE 462.422), p. 55. «An obvious option would be to extend the concept of subsidiary protection and include environmental disasters as one of the protected grounds, notably by amending paragraph (c) to include, besides the armed conflict also the environmental disasters. The status awarded may initially be more temporary and made dependent on the further evolution of the situation in the country of origin. Indeed, an early discussion note presented by the European Commission in 1999 in the context of the discussions regarding the scope and form of subsidiary protection also considered extending the scope of subsidiary protection to environmental displaces, although the suggestion was dropped by the time of the first proposal for the Qualification Directive. Yet the original version of article 15(c) of the first proposal – was considerably broader than the final provision adopted, giving subsidiary protection to individuals displaced as ‘a result of systematic or generalized violations of their human rights’, which might arguably extend to environmentally displaced persons, even if only in narrowly circumscribed circumstances» ([https://www.europarl.europa.eu/RegData/etudes/etudes/join/2011/462422/IPOL-LIBE\\_ET\(2011\)462422\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2011/462422/IPOL-LIBE_ET(2011)462422_EN.pdf)).

<sup>19</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *The European Green Deal*, COM(2019) 640 final, p. 23 ([https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0006.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0006.02/DOC_1&format=PDF)).

<sup>20</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *A New Pact on Migration and Asylum* COM/2020/609 final (<https://eur-lex.europa.eu/legal-content/IT/TXT/?qid=1601287338054&uri=COM:2020:609:FIN>).

<sup>21</sup> In recent years, the bulk of the EU’s humanitarian aid budget (80% of EUR 1.2 billion in 2018 and EUR 1.6 billion in 2019) has been allocated to projects that help forcibly displaced persons and their host communities to meet immediate essential needs in situations of conflict, crisis and protracted displacement.

<sup>22</sup> European Parliament resolution of 19 May 2021 on the effects of climate change on human rights and the role of environmental defenders in this context (2020/2134(INI)), see in particular p. 11 ([https://www.europarl.europa.eu/doceo/document/TA-9-2021-0245\\_IT.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0245_IT.pdf)).

environmental degradation and natural disasters as a major driver of climate-induced migration and displacement, and deplors the lack of human rights protection at the international level for those affected; considers that the issue of displacement should be addressed at the international level. Accordingly, it calls on the Commission and the Member States to support people displaced by climate change who are no longer able to live in their place of residence; points out that the UN Human Rights Committee has stated that states, when considering the deportation of asylum seekers, should take into account the human rights impact caused by the climate crisis in the country of origin; welcomes the inclusion of climate-induced migration and displacement in the Cancun Adaptation Framework.

#### 4. The example of Sweden and Finland

In relation to the possibility of receiving some form of protection for environmental victims, some Member States such as Sweden and Finland have provided very interesting forms of protection<sup>23</sup>. Sweden with the Swedish Aliens Act 2005/716<sup>24</sup> (Chapter 4 Refugees and other persons in need of protection, section A225) published on 30 December 2009 provided protection for the person who is unable to return to their country of origin<sup>26</sup> due to an environmental disaster. Finland in the Aliens Act 301/2004<sup>27</sup>, on the other hand, has established a residence permit for humanitarian reasons<sup>28</sup> for those who cannot return because of «natural disasters or insufficient security situations caused by internal or international armed conflicts or absence of human rights,

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<sup>23</sup> U. GAUDINO, *La gestione dei migranti climatici all'interno dell'UE*, 3 February 2019 (<http://www.opiniojuris.it/migranti-climatici-ue/>).

<sup>24</sup> E. HUSH, *Developing a European Model of International Protection for Environmentally-Displaced Persons: Lessons from Finland and Sweden*, Columbia Law School, September 2017.

<sup>25</sup> Swedish Code of Statutes SFS 2009:1542 published 30 December 2009 Act amending the Aliens Act (2005:716) issued on 17 December 2009.

<sup>26</sup> Act Amending the Aliens Act (2005:716), Sweden, 30 December 2009 (<https://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=5d271e784>).

<sup>27</sup> In the Finnish Aliens Act (301/2004), the legislator provides that an alien may be granted asylum if he or she is, in his or her own country, under «threat of the death penalty, torture or other inhuman treatment or treatment violating human dignity, or if he or she cannot return because of armed conflict or environmental disaster».

<sup>28</sup> Section 88 Need for protection (1) Aliens residing in the country are issued with a residence permit on the basis of a need for protection if the requirements for granting asylum under section 87 are not met but the aliens are in their home country or country of permanent residence under the threat of death penalty, torture or other inhuman treatment or treatment violating human dignity, or if they cannot return there because of an armed conflict or environmental disaster. (2) Aliens are not issued with a residence permit on the basis of a need for protection if they have committed, or if there are reasonable grounds to suspect that they have committed, an act referred to in section 87(2).

as reiterated in Section 109 of the Act, which specifically provides at least temporary protection for *environmentally displaced persons* and for those who cannot return because of a conflict<sup>29</sup>.

Finnish law, like Swedish law, provides for the possibility to apply for both asylum and subsidiary protection (known in Sweden as alternative protection). Protection for people fleeing environmental disasters before 2014 has been included in subsidiary protection.

The Finnish Law therefore added a new category called ‘humanitarian protection’. Article 301:2004<sup>30</sup> provided for: the issuing of a residence permit on humanitarian grounds to a foreigner residing in Finland in the hypothesis that he did not have the grounds referred to in articles 87 or 88 for granting the right to asylum, subsidiary protection, but could not return to his country of origin or country of previous habitual residence as a result of an environmental disaster or a bad security situation caused by an international or internal armed conflict or a poor human rights situation.

Consequently, an individual who could not benefit from refugee status or subsidiary protection could still obtain a Finnish residence permit if an environmental disaster prevented him from returning home. The terms environmental disaster and cannot return were not defined in the law. The intended permit would have been a continuous residence permit that could be extended to family members.

Finland has defined another type of protection for groups of environmentally displaced persons, as recognised by the Finnish government. More precisely, under Article 109 of the Act, temporary protection for foreigners in need of international protection who cannot safely return to their country of origin or country of permanent residence because there has been a massive displacement of people in the country or neighbouring areas as a result of an armed conflict, some other violent situation or an environmental disaster.

However, following the increase in migration flows in Europe with more than 1 million people entering in 2015, progressive migration policies have come under strong pressure, and Member States Sweden and Finland have adopted more restrictive policies<sup>31</sup>. In particular, the Finnish Parliament repealed the provisions on humanitarian protection in spring 2016, with

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<sup>29</sup> Aliens Act Finland (301/2004), Section 109 Temporary protection (1) (<https://www.refworld.org/docid/4b4d93ad2.html>).

<sup>30</sup> *Ibid.*

<sup>31</sup> *Dossier Senato della Repubblica, Camera dei deputati, Decreto-legge immigrazione e sicurezza pubblica*, d.l. n. 13 del 2018 - A.S. n. 840, 2018, pp. 57 e 60 (<http://www.senato.it/service/PDF/PDFServer/BGT/01076617.pdf>).

negative repercussions both on pending and accepted applications for humanitarian permits. Foreign nationals holding a humanitarian residence permit could only stay in Finland if they had some other reason to stay as a student or job. Temporary protection under Article 109, on the other hand, has not been repealed. At the same time, Sweden has provided for a temporary repeal, from 20 July 2016 to 19 July 2019.

According to this temporary suspension, persons otherwise in need of protection (including environmental migrants) were no longer entitled to a residence permit, while persons granted refugee status or alternative protection status are only eligible for temporary residence permits.

Finally, on 20 July 2021, amendments were introduced to the Swedish Aliens Act 2005/716, to improve the system of temporary protection status and residence permits for refugees. In particular, further amendments to temporary protection were introduced in Section 1 of Chapter 21. The latter contains provisions on temporary protection in accordance with 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 to promote a balance between the efforts of Member States to: receive such persons and bear the consequences thereof. Section 2 provides for the issuance of a temporary residence permit, a residence permit with protection to an alien who is the subject of a decision on temporary protection under Directive 2001/55/EC and who, in accordance with the Directive, is transferred to or received in Sweden<sup>32</sup>.

## 5. Conclusions

The international shift due to environmental catastrophes has already begun and will continue to increase in severity and scope during this century and beyond. The European Union together with the major European powers must take preventive action to ensure that environmental displaced persons receive adequate protection when they arrive on foreign shores. Member States will probably continue to refuse to act unilaterally because they do not want to expose themselves to the financial, administrative and cultural costs of receiving more refugees than their neighbours.

In other words, it is clear that the issue of environmental migration cannot be separated from

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<sup>32</sup> Swedish Aliens Act 2005/716, Chapter 21 Temporary protection Section 1 (<https://rkrattsbaser.gov.se/sfst?bet=2005:716>); V. KOLMANNKOG, *Climate change-related displacement and the European response*, paper presented at SID Vijverberg Session on Climate Change and Migration, The Hague, 20 January 2009 (<http://sideurope.wordpress.com/2009/03/03/third-vijverberg-session-climate-change-and-migration/>).

that of sustainable development and from a new vision of global socio-economic dynamics. The scale of migration linked to profound environmental and climatic changes can no longer be ignored, and the migratory flows that now affect millions of people must necessarily be considered as the outcome of the now difficult interdependence between man and the environment. Taking into account the current context of globalisation, making these rights effective requires greater collaboration between migrants' countries of origin, transit and destination, non-governmental institutions and civil society.

The motivation to use the term environmental refugee, certainly linked to sociological aspects, mainly concerns legal issues, generating some criticalities, particularly in the way it is implemented. Not forgetting the distinction between the principles of capacity to compensate and those of liability for past emissions, environmental law has a fairly complex application and not without difficulties on the part of jurisprudence, since it does not possess true ontological independence. This is also reflected in the behaviour of the states most responsible for the negative effects of climate change and their attitude of self-defence with regard to environmental migration<sup>33</sup>. Moreover, given the more general difficulty of guaranteeing a uniform status in asylum matters and related procedures, the paradox would arise that faced with a single definition of refugee, the interpretations by States could be different. At present, there are still various doubts about the existence of a common asylum system, the achievement of the harmonisation envisaged by the Qualification Directive 2011/95/EU, and the concept of the actor of protection in the various national legal systems.

On the other hand, by focusing on the possible formulation of a definition of environmental refugee and less on the possible implementation procedures, we should look positively at the universalistic value of the term refugee as provided for in the 1951<sup>34</sup> Convention and the subsequent Protocol, which is still very topical today. Moreover, it is necessary to highlight the principle of non-refoulement in Article 33, which is one of the fundamental principles of the Convention, so much so that it can be considered a principle of customary law, not only for refugee status. From this provision derives the prohibition to reject an individual to a country where his life and freedoms could be violated, even if it does not bind the State of destination to ensure the migrant in question

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<sup>33</sup> L. BIGNAMI, “*Profughi e migranti: in fuga (anche) dai cambiamenti climatici*”, in *Focus*, 3 January 2018 (<https://www.focus.it/comportamento/economia/profughi-e-migranti-in-fuga-dai-cambiamenti-climatici>).

<sup>34</sup> J. VAN DER VLIET, ‘*Climate refugees: a legal mapping exercise 16*’, in S. BEHRMAN, A. Kent, ‘*Climate Refugees: Beyond the Legal Impasse?*’, Milton Park, Abingdon, 2018, pp. 16-29, 2018.

a permanent and stable regime of protection and reception.

The best solution to these inequalities is for the European Union to amend Directive 2011/95/EU on refugee status to expressly provide protection to displaced persons. Well, by adopting the latter, the EU would set a commendable example of legal action and enhance its reputation as a world leader in human rights, while providing much-needed protection to the growing number of people displaced by environmental disasters.

Alternatively, the possibility of issuing an extraordinary permit for temporary protection reasons, which already exists under European law (Directive 2001/55/EC), would also be considered, directly and simultaneously binding all European countries concerned by a decision of the Council of the European Union as happened for Ukraine.

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