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التعليم العالي والبحث العلمي
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كلية الشريعة والاقتصاد
مخبر الدراسات الشرعية
مخبر البحث في الدراسات القانونية والفقهية المقارنة
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أزمة التمييز المفاهيمي وإشكالية الفراغ التشريعي في القانون الدولي "

THE ENVIRONMENTAL REFUGEE AND THE ENVIRONMENTAL
MIGRANT

*Crisis of Conceptual Distinction and the Problem of the Legislative Void in
International Law*

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ملخص المداخلة:

يتناول هذا البحث إشكالية التمييز المفاهيمي بين مصطلحي "اللاجئ البيئي" و"المهاجر البيئي" في ضوء أحكام القانون الدولي، وهو تمييز يبدو في ظاهره لغويا، غير أنه يرتب تداعيات قانونية بالغة الأهمية. وتنطلق الدراسة من تحليل نقدي لقصور المنظومة القانونية الدولية القائمة، ولا سيما اتفاقية جنيف لسنة 1951 المتعلقة بوضع اللاجئين، عن تقديم حماية فعلية لضحايا الأزمات البيئية والمناخية. وتكشف عن فراغ تشريعي هيكلي يعكس أزمة حوكمة حقيقية على الصعيد الدولي، في ظل اتساع رقعة الهجرة البيئية وتصاعد حدتها. وتخلص الدراسة إلى جملة من التوصيات البحثية الرامية إلى إرساء إطار قانوني دولي ملزم يكفل الحماية الشاملة لهذه الفئات المستضعفة.

الكلمات المفتاحية: اللاجئين البيئي - المهاجر البيئي - قانون اللاجئين الدولي - الحماية الدولية - اتفاقية جنيف 1951 - تغير المناخ.

Abstract

This article examines the conceptual distinction between the notions of "environmental refugee" (اللاجئ البيئي) and "environmental migrant" (المهاجر البيئي) under international law — an apparently semantic distinction that carries profound legal consequences. The analysis proceeds from a critical assessment of the inadequacy of existing international legal frameworks, particularly the 1951 Geneva Convention Relating to the Status of Refugees, in affording effective protection to victims of environmental and climate crises. The study reveals a structural legislative void (الفراغ التشريعي) reflecting a genuine governance crisis at the international level, as the scope and severity of environmental displacement continue to expand. The article concludes with a set of scholarly recommendations aimed at establishing a binding international legal framework capable of ensuring comprehensive protection for these vulnerable populations.

Keywords: *Environmental refugee — Environmental migrant — International refugee law — International protection — 1951 Geneva Convention — Climate change.*

INTRODUCTION

جامعة الأمير عبد القادر للعلوم الإسلامية-قسنطينة

كلية الشريعة والاقتصاد

مخبر الدراسات الشرعية ومخبر البحث في الدراسات القانونية والفقهية المقارنة

The twenty-first century has opened under the sign of an unprecedented environmental crisis in the history of humanity. Rising sea levels, desertification, the multiplication of natural disasters, and climate upheavals have generated migratory flows of an unparalleled magnitude, forcing millions of human beings to abandon their ancestral lands, often with no prospect of return. The International Organization for Migration (IOM) (المنظمة الدولية للهجرة) estimated, as early as 2007, that between 25 and 50 million people had already been compelled to move for environmental reasons, and the most recent projections suggest that, by 2050, this figure could reach between 200 and 250 million persons. Faced with this alarming reality, international law (القانون الدولي) remains singularly ill-equipped. The legal categories inherited from the post-war era — forged in 1951 in the context of a bipolar world confronting political persecutions — struggle to capture the complexity and specificity of the phenomenon of environmental migration. The Geneva Convention Relating to the Status of Refugees defines a refugee as any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. Yet, victims of

ecological disasters fall within none of these categories, which produces a protection void with dramatic human consequences.

The central research question that guides this article is the following: *Is contemporary international law capable of transcending the reductive opposition between the "environmental refugee" () and the المهاجر البيئي "environmental migrant" (), so as to provide effective legal protection to persons compelled to flee the effects of ecological upheavals?*

This question strikes at the heart of the tension between the rigidity of existing normative frameworks and the dynamics of evolving social and environmental realities. It engages international refugee law, international human rights law, international environmental law, and migration law, whose complex interactions call for a genuinely interdisciplinary approach. It is precisely this analytical and critical approach that we adopt in the present study, based on an in-depth examination of normative sources — international conventions, soft law (القانون الرخو غير الملزم) instruments, the jurisprudence of human rights protection bodies — and specialized legal doctrine.

As Jane McAdam, Director of the Kaldor Centre for International Refugee Law at the University of New South Wales, has aptly observed, "existing legal regimes do not provide a sufficient basis for granting international protection to persons displaced by climate change."

() constitutes This assessment of the inadequacy of positive law (the starting point of our analysis, which is structured around two complementary axes: the first is devoted to the crisis of conceptual distinction between the environmental refugee and the environmental migrant, and to the inadequacies of existing international law; the second examines the pathways towards normative reform, by considering doctrinal proposals and jurisprudential developments) capable of filling this legislative void () .التشريعي الفراغ

CHAPTER I — THE CRISIS OF CONCEPTUAL DISTINCTION: BETWEEN TERMINOLOGICAL IMPRECISION AND LEGAL VOID

The issue of environmentally induced migration suffers, in the first place, from a profound conceptual indeterminacy whose practical consequences for legal protection are far from negligible. The terms () "environmental refugee" (اللاجئ البيئي) "environmental migrant" (المهاجر البيئي), () "climate displaced person" (النازح المناخي) "eco-refugee" (اللاجئ الأيكولوجي), and are frequently used interchangeably in media, political, and even academic discourse, without this terminological diversity corresponding to sufficient legal clarity. This conceptual confusion is not merely a matter of semantics: it directly determines the scope of protections granted and the obligations imposed upon States.

Section 1 — The Foundations of the Terminological Debate: Between Doctrinal Construction and Normative Silence

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The terminology relating to environmental migration constitutes an intellectual and legal battleground, where scientific, political, and normative considerations intersect. Tracing the genesis of this debate and analysing its implications is essential to understanding why international law has thus far been unable to resolve the tension between notions with imprecise and shifting contours.

Sub-section 1 — The Genesis of the Concepts: From Scientific Designation to Legal Impasse

A — The Emergence of the Concept of "Environmental Refugee" and its Structural Limitations

The notion of "environmental refugee" (اللاجئ البيئي) was introduced into international vocabulary for the first time by Essam El-Hinnawi, a researcher at the United Nations Environment Programme (UNEP) (برنامج الأمم المتحدة للبيئة), in a report published in 1985. This pioneering report defined environmental refugees as "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 jeopardised their existence and/or seriously affected the quality of their life." This definition never acquired binding normative force, but it had the merit of drawing the attention of the international community to a reality that had until then been largely ignored by legal scholars.

The doctrinal reception of this concept was, however, far from unanimous. As early as the 1990s, scholars such as Norman Myers sought to extend its scope by incorporating the long-term consequences of climate change, estimating that up to 150 million persons could be displaced by 2050 as a result of sea-level rise alone. These alarming projections contributed to increasing the political visibility of the phenomenon, but they also fuelled confusion between migrations induced by sudden disasters and those resulting from the gradual degradation of the environment — two realities with markedly different legal dynamics. It is precisely this conceptual ambiguity that the UNHCR sought to dispel by firmly opposing the use of the term "environmental refugee" (اللاجئ البيئي), preferring instead the notion of "persons displaced for environmental reasons."

B — The IOM and the Construction of an Operational Definition of "Environmental Migrant"

In response to this conceptual void, the International Organization for Migration (IOM) proposed, at the 94th session of its Council in November 2007, a working definition that has since become an indispensable reference. According to this definition, environmental migrants (المهاجرون البيئيون) are: "persons or groups of persons who, for compelling 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." This deliberately broad and non-normative definition seeks to capture the complexity of the phenomenon without creating a binding legal category.

It should be noted that the IOM, in its definition, identifies several complex forms that environmental migration may take: emergency environmental migrants (fleeing a sudden disaster), constrained environmental migrants (leaving due to gradual degradation), and motivated environmental migrants (departing to avoid future problems). As for the nature of the migration itself, it may be temporary or permanent, internal or international, individual or collective, short-range or long-distance. Such a taxonomy, while analytically useful, ultimately reflects the impossibility of reducing the phenomenon to a single univocal definition, which considerably complicates any attempt at legal codification.

It should further be noted that the IOM considers "climate migration") as a subcategory of environmental migration, defining a الهجرة المناخية (particular type thereof in which environmental change is attributable to climate change.

Sub-section 2 — The Aporia of the Existing Normative Framework in the Face of Environmental Migration

A — The Structural Inadequacy of the 1951 Geneva Convention

The Geneva Convention of 28 July 1951 Relating to the Status of Refugees (اتفاقية جنيف لعام 1951) constitutes the cornerstone of international refugee law (القانون الدولي للاجئين). Its Article 1A(2) defines a refugee as any person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." This definition rests on three cumulative elements: a well-founded fear of persecution, one of the five enumerated grounds, and the crossing of an international border.

Yet, victims of ecological disasters satisfy none of these criteria in a direct manner. Environmental degradation does not, in itself, constitute "persecution" (الاضطهاد) in the legal sense of the term, which implies intentional conduct emanating from a State or non-State actor directed specifically against an individual or a group. Moreover, the vast majority of environmental displacements occur within national borders, thereby excluding the persons concerned from the *ratione personae* scope of the Convention. Cournil and Mazzega have clearly demonstrated that "the

legal instruments for protecting ecological refugees are lacking" and that "the structural limitations of international refugee law do not permit protection commensurate with the scale of the challenge." This inadequacy is not circumstantial but structural: it is rooted in the very philosophy of the international refugee protection regime, which is based on the triangular relationship between the individual, the defaulting State of origin, and the protective host State — a relationship that is absent in the context of environmental migration.

B — The Insufficiency of Regional Instruments and Subsidiary Protection Mechanisms

In the face of the shortcomings of the universal regime, several regional instruments have attempted to expand the scope of international protection. The OAU Convention of 1969 and, more recently, the 2009 Kampala Convention on the Protection and Assistance of Internally Displaced Persons in Africa represent the most notable advances.

) explicitly requires States parties to take "the necessary measures to provide protection and assistance to internally displaced persons, irrespective of the cause of displacement," including displacement caused by natural or human-made disasters and climate change. However, this Convention concerns only internal displacements and does not establish a binding protection mechanism

for persons crossing international borders. The gap therefore remains intact with respect to transboundary environmental migration.

Outside the African framework, existing initiatives fall exclusively) and create no legally binding القانون الرخو within the domain of soft law (obligations for States. This is the case with the Guiding Principles on Internal Displacement, adopted in 1998, which remain the only instrument of universal scope applicable to displaced persons, but without binding force; and the Global Compact for Safe, Orderly and), adopted in 2018, الميثاق العالمي للهجرة الآمنة والمنظمة والمنتظمة Regular Migration (which incorporates the environmental dimension of migration without creating any legally enforceable protection mechanism binding on States.

Thus, in the absence of a universally binding instrument and given the manifest insufficiency of regional responses outside the African framework, it is broadly accepted in legal doctrine that the notions of "environmental refugee" and "environmental migrant" remain devoid of any legal value in international law, insofar as the international refugee protection regime was not designed to respond to situations of environmental degradation or disruption. This assessment, articulated for more than a decade, has not fundamentally evolved, and the international community continues to struggle to move beyond the

stage of conceptual debate towards an effective and universally
recognised legal protection framework.

Section 2 — The Contours of a Necessary but Legally Elusive Distinction

Beyond the inadequacy of the existing normative framework, the
) and the distinction between the environmental refugee (البيئي
) raises fundamental conceptual environmental migrant (المهاجر البيئي
challenges that are inherent to the complexity of environmental
migration phenomena. Understanding the rationale behind this
distinction — and the reasons why it resists stable legal codification — is
indispensable for appreciating the full scope of the normative challenge.

Sub-section 1 — The Criterion of Compulsion: Between Voluntary Choice and Forced Displacement

A — The Porous Boundary Between Voluntary Migration and Forced Displacement

) lies at the heart of the distinction معيار الإكراه The criterion of compulsion (البيئي
between the migrant — who moves by choice — and the refugee — who
is compelled to flee. In the environmental context, however, this
distinction loses much of its clarity. François Gemenne, a political
scientist specialising in climate migration and a member of the
Intergovernmental Panel on Climate Change (IPCC) (الهيئة الحكومية الدولية المعنية

), has highlighted the continuum that exists between "voluntary" migration and "forced" displacement in the environmental domain: when a Sahelian farmer leaves his drought-devastated lands, to what extent is he exercising a free and informed choice? The boundary between compulsion and voluntary action becomes, in such cases, a legal fiction. This difficulty is all the more acute given that environmental migrations most often occur in a context of multi-causality, where environmental factors intertwine with economic, social, and political considerations.

As the IOM's Environmental Migration Portal emphasises, the nature of environmental migration "depends on the way it interacts with other socioeconomic, cultural and political factors that influence the decision or need to migrate." This multi-causality makes it virtually impossible to establish an exclusive causal link between environmental degradation and displacement, which severely undermines any attempt at a precise legal definition based solely on the environmental dimension. Similarly, the individualistic approach inherited from refugee law is fundamentally ill-adapted to phenomena that are most often collective in character.

B — The Temporality of Displacement: Sudden Emergency Versus Progressive Degradation

A further dimension of the distinction relates to the temporality of the environmental phenomenon that gives rise to the displacement.

Migrations resulting from sudden events (hurricanes, tsunamis, catastrophic floods) differ profoundly, both in nature and in their legal consequences, from migrations resulting from the slow and progressive deterioration of the environment. In the first case, the causal link between the event and the displacement is relatively straightforward to establish; in the second, the relationship is diffuse, gradual, and often mediated by complex socioeconomic factors.

This temporal distinction conditions the possibility of return (إمكانية العودة), which is a central element in refugee law. Persons displaced by a sudden disaster may, in principle, return home once the situation has stabilised.

By contrast, those compelled to flee due to irreversible environmental degradation face a situation analogous to that of political refugees: they are materially unable to return to their country of origin. The situation of nationals of the State of Kiribati, whose territory is threatened with physical disappearance due to rising sea levels, illustrates this unprecedented configuration in the most dramatic fashion. As Christel Cournil and François Gemenne have aptly noted, this problematic of the disappearance of a nation-State gives rise to a "new form of statelessness" (شكل جديد من انعدام الجنسية) that international law has not yet managed to address in a systematic manner.

Sub-section 2 — The Issues of State Sovereignty and International Responsibility

A — The Question of the Responsibility of Greenhouse Gas-Emitting States

Environmental migration raises the fundamental question of the) of States whose greenhouse gas الدولية المسؤولية international responsibility (emissions contribute decisively to the climate changes that underlie numerous displacements. A manifest paradox exists: the populations most vulnerable to the effects of climate change are precisely those that contribute least to global emissions, yet suffer the most devastating consequences. This paradox forms the foundation of a growing demand). On the legal plane, العدالة المناخية العابرة للحدود for transnational climate justice (مبدأ المسؤولية المشتركة the principle of common but differentiated responsibilities (), enshrined in the UNFCCC of 1992 and reaffirmed in the المشتركة والمتباينة Paris Agreement of 2015, provides a theoretical basis for articulating the question of climate responsibility with that of the protection of environmental migrants.

) acknowledges that Parties should, when اتفاق باريس The Paris Agreement (taking action to address climate change, respect, promote, and consider their respective obligations on human rights, including the rights of migrants. However, this solemn recognition is not accompanied by any binding mechanism to ensure the effective protection of persons displaced by climate change effects. It is precisely this "legal void" (الفراغ

القانوني that characterises the current framework of climate migration and that urgently calls to be filled.

B — State Resistance to the Creation of New Protection Obligations

One of the deepest explanations for the persistent legislative void lies in the political resistance of States — particularly developed States, as the principal historical emitters of greenhouse gases — to committing to protection mechanisms that would impose formal obligations of reception and responsibility upon them. The ambitious requirements of treaty on climate or environmental refugees are a hard law (unlikely to generate enthusiasm in the current climate of security-oriented politics. By contrast, States of the Global South will certainly have a stronger interest in supporting such a project.

This North–South divide reflects a fundamental geopolitical reality: environmental migrations are not solely a humanitarian issue — they are equally a question of power and national interests. François Gemenne, in his work on the geopolitics of climate, has convincingly highlighted the strategic dimension of this question, noting that political responses to these migrations remain "too deeply embedded in a reactive logic" rather than a preventive and solidary approach. This political dimension is inseparable from the legal analysis and constitutes one of the principal obstacles to the normative reform that the situation demands.

CHAPTER II — TOWARDS OVERCOMING THE LEGISLATIVE VOID: JURISPRUDENTIAL ADVANCES AND NORMATIVE PROPOSALS

Whereas the first chapter highlighted the extent of the legislative void and the depth of the conceptual crisis, it is now necessary to examine the ways in which international law is attempting — tentatively but resolutely — to fill this gap.

The legal void at the international level calls for urgent normative development, whether through treaty-making, through regional courts, or through the progressive development of customary international law. This normative dynamic operates through two complementary vectors: the jurisprudence of human rights protection bodies, and doctrinal and institutional proposals.

Section 1 — Jurisprudential Advances: Towards an Indirect Protection of Environmental Migrants

International jurisprudence frequently serves as the laboratory in which the law experiments with its own reconfigurations in the face of new realities. It is in this spirit that the recent advances made by human rights protection bodies in the field of environmental migration must be appreciated.

Sub-section 1 — The Teitiota Case and the Silent Revolution of the Non-Refoulement Principle

A — The Decision of the UN Human Rights Committee in the Teitiota Case (2019)

The case of Teitiota v. New Zealand, decided by the United Nations Human Rights Committee () on 24 October 2019, constitutes an undisputable landmark in the jurisprudential evolution relating to the protection of environmental migrants. Mr Teitiota, a national of the island State of Kiribati, had applied for refugee status in New Zealand, invoking the risks associated with rising sea levels on his island. His application was rejected by New Zealand authorities and he was returned to his country of origin. He subsequently brought a communication before the Human Rights Committee under Article 6 of the International Covenant on Civil and Political Rights (ICCPR) (الدولي الخاص بالحقوق المدنية والسياسية).

Although the Committee did not uphold Mr Teitiota's claim in the specific circumstances of the case, it established a principle of considerable significance: the adverse effects of climate change may, "in certain circumstances," expose individuals to a violation of their rights under the Covenant, thereby triggering the non-refoulement obligations () incumbent upon States. In other terms, the Committee recognised that a State may be held responsible for a

violation of the right to life if it returns an individual to a country where his or her life would be seriously threatened by the effects of climate change. This decision thus opens a breach in the normative wall — without, however, fully crossing it.

B — The Scope and Limits of the Jurisprudential Extension of Non-Refoulement

The principle of non-refoulement (مبدأ عدم الإعادة القسرية), affirmed as a norm of jus cogens (قاعدة آمرة من قواعد القانون الدولي), constitutes potentially the most immediately applicable protection mechanism for environmental migrants compelled to cross international borders. This principle prohibits States from expelling or returning any person to a territory where his or her life or freedom would be threatened. The extension of its application to situations of serious environmental degradation represents a promising avenue.

Certain scholars have described non-refoulement as a "legal glimmer of hope" for environmental migrants, highlighting that "as a fundamental and widely codified norm of customary international law, non-refoulement offers a pathway for States and stakeholders to extend protection to some of the world's most vulnerable individuals."

Jane McAdam has particularly developed the analysis of the Teitiotā decision in her recent works, noting that "over the span of a decade, a significant body of jurisprudence and guidance has developed that

clearly shows how, in the right factual scenario, individuals could indeed receive protection linked to the impacts of climate change." However, this approach presents important limitations: non-refoulement is a defensive and reactive mechanism, which can only be activated after the migrant has crossed an international border, thereby leaving internally displaced persons without protection. Moreover, it requires the establishment of a clear causal link between environmental degradation and an imminent risk to the individual's life, which is often difficult to demonstrate in cases of slow and progressive deterioration.

Sub-section 2 — Soft Law Instruments and Their Contribution to the Progressive Construction of a Protection Regime

A — The 2018 Global Compacts and the Cancún Framework

The past two decades have been marked by the adoption of a range of soft law instruments that, while not creating legally binding obligations, constitute important normative reference points. The Cancún Adaptation Framework (2010) was the first international climate instrument to explicitly call upon States to integrate human mobility considerations into their adaptation plans. The Paris Agreement of 2015 subsequently incorporated, within its Warsaw Mechanism, a component devoted to human mobility — representing the first formal recognition in an international climate instrument of the link between climate change and displacement.

The Global Compact for Safe, Orderly and Regular Migration (الميثاق العالمي للهجرة), adopted in Marrakech in December 2018, represents a further advance by explicitly recognising climate disasters as drivers of displacement and inviting States to "develop adaptation and resilience measures for people who are unable to migrate" due to natural disasters. Similarly, the **Global Compact on Refugees (الميثاق العالمي للاجئين 2018)** acknowledges that climate change and natural disasters "interact increasingly with the drivers that force people to flee." Nevertheless, these instruments remain non-binding, which considerably limits their practical impact.

B — The Nansen Principles and the Sydney Declaration: Towards Nascent Customary Law

The Nansen Initiative on Disaster-Induced Cross-Border Displacement (مبادرة نانسن), launched in 2012 by Switzerland and Norway, culminated in 2015 in a Protection Agenda that compiles best State practices. Although it lacks binding force, this Agenda demonstrates the existence of a growing State practice that could, in the long term, form the basis of a customary international rule (قاعدة دولية عرفية).

In addition, the **Sydney Declaration of the International Law Association (2018)** on the principles of protection of persons displaced in the context of sea-level rise lays the legal groundwork for specific protection for this vulnerable category. It addresses, in particular, the

) of nationals of unprecedented question of the statelessness (island States threatened with physical disappearance.

The Pacific Regional Framework on Climate Mobility of 2023 represents the most recent development in this area and illustrates the viability of regional solutions. Adopted by the Pacific island States most directly threatened by rising sea levels, this Framework constitutes a model for other regions facing the same challenges. It attests that, even in the absence of a universal agreement, tailored regional solutions can provide a partial but effective response to the problem of protecting environmental migrants, thereby confirming the thesis of "progressive legal pluralism" as a pathway for normative development.

Section 2 — Proposals for Normative Reform: Between Reformism and Legal Innovation

In the face of the acknowledged inadequacy of positive law, legal doctrine has developed several proposals designed to fill the legislative void. These proposals range across a spectrum from the reform of existing instruments to the creation of an entirely new legal regime. A critical examination of these proposals allows for the identification of the conditions and challenges of an ambitious normative reform.

Sub-section 1 — Proposals de Lege Ferenda: Between Reform and Normative Creation

A — Amending the Geneva Convention: An Appealing but Perilous

Path

The most obvious proposal consists in amending the 1951 Geneva Convention (1951) so as to incorporate environmental grounds among the causes capable of justifying the grant of refugee status. This approach has been advocated by several scholars who maintain that environmental degradation may, in certain cases, constitute a form of persecution in the broad sense, particularly where it results from the failure or deliberate inaction of a State. ACAT France has detailed this proposal, suggesting in particular "amending the Geneva Convention and, specifically, its Article 1A§2 so as to consider environmental degradations as a form of persecution."

However, this approach raises serious objections. On the practical level, amending the Geneva Convention requires the agreement of virtually all States parties, which appears politically unrealisable in the current context. On the normative level, such a revision risks weakening the protection currently afforded to political refugees () by diluting the conventional definition.

Jane McAdam has emphasised, in her reference work, that "existing instruments were adopted to address the situations of certain categories of persons identified by the international community as needing a particular type of international protection" and that they cannot,

without losing their coherence, be extended indefinitely. To this critical analysis must be added the fundamental inadequacy of the Convention's individualistic approach in relation to environmental migrations, which are most often collective in character.

B — Creating a New International Convention: The Limoges Project and its Successors

The most ambitious proposal in legal doctrine is that advanced by the International Centre for Comparative Environmental Law (CIDCE) of the University of Limoges, which developed, as early as 2008, a Draft Convention on the International Status of Environmentally Displaced Persons.

This project proposes the creation of a specific status for), distinct from refugee النازحون البيئيون environmentally displaced persons (status and adapted to the specificities of environmental migration. It notably provides for a mechanism of collective recognition and the creation of a United Nations High Commissioner for Environmentally Displaced Persons.

In the wake of this proposal, Frank Biermann and Ingrid Boas argued, in 2010, for the adoption of a specific Protocol on climate refugees within the framework of the UNFCCC, contending that the climate framework was better suited than the refugee regime to address these issues.

Other scholars argue for the emergence of a customary obligation upon States to grant a form of protection to compelled climate migrants, founded on the principle of interdependence among States: "States of origin have become extremely fragile from an environmental standpoint as a result of climate change, to the point of being unable to guarantee the exercise of inalienable human rights within their territories." These various proposals converge towards the necessity of a binding instrument, even if they diverge on the form it should take.

Sub-section 2 — The Conditions for Effective Normative Reform

A — The Necessity of a Consensual Definition and a Dedicated Institutional Mechanism

Any normative reform proposal must rest upon a consensual definition of the persons to be protected. The IOM's 2007 working definition can serve as a foundation, provided it is refined in legally precise terms and accompanied by appropriate verification and recognition mechanisms.

This precision is indispensable because, as the European Parliament has noted in its 2021 study on the concept of "climate refugee" (اللاجئ المناخي), the absence of a legally binding definition constitutes one of the principal obstacles to the development of specific protection policies. The definition should adopt a mixed approach, combining objective elements (the nature and severity of environmental degradation) with

subjective elements (the degree of compulsion bearing upon the decision to migrate).

Furthermore, the creation of a dedicated institutional body is indispensable. The UNHCR (), whose mandate is currently limited to refugees within the meaning of the 1951 Convention, has neither the formal mandate nor the resources to assume the protection of all environmental migrants. The formal extension of its mandate to this category, or the creation of a specific body, would represent an institutional reform of major importance. The IOM has, moreover, published in 2024 a comprehensive study on the legal aspects of protecting migrants in the context of disasters and climate change, which provides a valuable normative toolkit for legal practitioners.

B — The Articulation Between Climate Justice and the Protection of Environmental Migrants

The question of environmental migration cannot be dissociated from that of international climate justice (). Environmental migration is a matter of geopolitics as much as of humanitarian law, and demands a collective and solidary response.

This dimension of justice calls for the creation of a specific financing mechanism, funded principally by the greatest greenhouse gas-emitting

States, in application of the principle of differentiated responsibility (المسؤولية المتباينة).

In this regard, many specialists emphasise that "incremental normative development, through legal pluralism (realistic pathway" in the current political context, combining the contributions of domestic courts, regional human rights bodies, and international organisations to progressively build a coherent protection regime.

This gradualist approach, while not offering the clarity of a universal treaty, has the advantage of adapting to political realities while laying the foundations for a future conventional regime.

CONCLUSION

At the conclusion of this analysis, several findings emerge, bearing witness both to the scale of the normative challenge and to the urgent need for an ambitious and concerted legal response.

In the first place, the conceptual distinction between "environmental refugee" (المهاجر البيئي) and "environmental migrant" (اللاجئ البيئي) reflects a profoundly problematic legal reality: the total absence of any recognised legal status for persons displaced by ecological upheavals. This gap is not the product of an oversight or a lapse in attention, but rather the result of deliberate political resistance. The existing conventional instruments,

chief among them the 1951 Geneva Convention, were not designed to address this reality and their adaptation can only result from bold jurisprudential interpretations or a strong political will to reform them. In the second place, recent jurisprudential advances — notably the 2019 Teitiota decision — open promising avenues through the extension of the non-refoulement principle () to situations of serious environmental degradation. These advances nevertheless remain insufficient to address the full scale of the phenomenon. They offer a piecemeal and reactive protection, whereas the situation calls for systematic and proactive protection.

In the third place, the various proposals advanced in doctrine attest to the vitality of legal scholarship on this subject. Their common thread is the recognition of the need for a binding instrument, endowed with a clear definition of its beneficiaries, effective recognition and protection mechanisms, and a solidary financing system.

In light of these conclusions, the following recommendations are addressed to the international community:

First: To undertake, under the auspices of the United Nations, a negotiation process with a view to adopting an international convention on the protection of environmentally displaced persons (), founded on the principle of common but differentiated responsibility, inspired by the best regional practices, and providing for

a collective protection mechanism applicable in situations of mass displacement.

Second: To strengthen the role of existing human rights mechanisms by encouraging the UN Human Rights Committee to adopt a specific General Comment on the right to life in the context of climate change, consolidating the Teitiotia jurisprudence.

Third: To establish an international solidarity fund specifically dedicated to addressing environmental migrations (financed primarily by the greatest greenhouse gas-emitting States, in application of the principle of differentiated responsibility.

Fourth: To strengthen the institutional capacities of the IOM and the UNHCR to collect reliable data on environmental migrations and to design appropriate prevention and management policies.

Ultimately, the problematic of the environmental refugee and the environmental migrant confronts us with a civilisational question: Is our international legal order, forged in the twentieth century to respond to the political and military upheavals of that era, capable of renewing itself to face the challenges of a twenty-first century dominated by climate emergency? The answer to this question will determine not only the fate of millions of vulnerable persons, but also the credibility of international law itself as an instrument for regulating human relations at the planetary scale.