RELAÇÕES INTERNACIONAIS NO MUNDO ATUAL

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THE ROLE OF DIPLOMACY IN DISPLACEMENTS / MIGRATIONS CAUSED BY THE COLLAPSE OF ECOSYSTEM SERVICES

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ABSTRACT

Human wellbeing relies on ecosystems and their services. Without ecosystem services that meet the basic needs of the communities, there is no other option for people than to move to another location. This article has three objectives: first, to expose the relationship between and the collapse of ecosystem services and human mobility; second, to examine the legal limitations on international protection of people who move under the influence of these processes; and third, to expose the role of diplomacy in promoting the international protection of environmental migrants. To meet these objectives the authors carried out a qualitative and exploratory study, through bibliographic and documentary sources. The authors focused on "thematic analysis", a method by which the following steps are performed: pre-analysis (floating reading, constitution of the corpus, hypothesis formulation) and exploration of the material (coding, classification, aggregation of data). In conclusion, it was verified that: i) there is an intimate relationship between the collapse of ecosystem services and human mobility; ii) the main international legal instruments that provide for the application of the principle of *non-refoulement* are not adequate to protect environmental migrants; iii) the construction of lasting solutions and the immediate protection of environmental migrants depend on diplomatic efforts. Diplomacy ends up being the main factor affecting the protection of these people, in the face of the lack of appropriate international standards. Given the existing normative gap regarding the protection of environmental migrants, it is politics, not the Law, that determines the fate of these people.

Keywords: Environmental Migration; Ecosystem Services; Diplomacy; Climate Change; Human Mobility.

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O PAPEL DA DIPLOMACIA NOS DESLOCAMENTOS/MIGRAÇÕES CAUSADOS PELO COLAPSO DOS SERVIÇOS DOS ECOSSISTEMAS

RESUMO

O bem-estar humano depende dos ecossistemas e de seus serviços. Sem serviços ecossistêmicos que atendam às necessidades básicas das comunidades, não há outra opção para as pessoas a não ser se mudar para outro local. Este artigo tem três objetivos: primeiro, expor a relação e o colapso dos serviços ecossistêmicos e a mobilidade humana; em segundo lugar, examinar as limitações legais à proteção internacional das pessoas que se deslocam sob a influência desses processos; e terceiro, expor o papel da diplomacia na promoção da proteção internacional dos migrantes ambientais. Para atender a esses objetivos os autores realizaram um estudo qualitativo e exploratório, por meio de fontes bibliográficas e documentais. Os autores focaram na "análise temática", método pelo qual são realizadas as seguintes etapas: pré-análise (leitura flutuante, constituição do corpus, formulação de hipóteses) e exploração do material (codificação, classificação, agregação dos dados). Em conclusão, verificou-se que: i) existe uma relação íntima entre o colapso dos serviços ecossistêmicos e a mobilidade humana; ii) os principais instrumentos jurídicos internacionais que prevêem a aplicação do princípio de não repulsão não são adequados para proteger os migrantes ambientais; iii) a construção de soluções duradouras e a proteção imediata dos migrantes ambientais dependem de esforços diplomáticos. A diplomacia acaba sendo o principal fator que afeta a proteção dessas pessoas, diante da falta de padrões internacionais adequados. Dada a lacuna normativa existente quanto à proteção dos migrantes ambientais, é a política, e não a Lei, que determina o destino dessas pessoas.

Palavras-chave: Migração Ambiental; Serviços de ecossistemas; Diplomacia; Das Alterações Climáticas; Mobilidade Humana.

1 INTRODUCTION

Human wellbeing relies on ecosystems and their services. The capacity of ecosystems to maintain societies' economies and welfare depends on their conservation. Issues like increased pressure on biodiversity, fragmentation of landscape, intense use of natural resources, pollution, climate change and others human interventions can lead to collapse of the services provided by ecosystems. The collapse of ecosystem services is the result of the reach of "tipping points", that is, the ecosystem's limit to sustain human wellbeing. After crossing these ecological thresholds, ecosystem support for human activities will decline abruptly, with little chance of recovering lost ecosystem services. Without ecosystem services that meet

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the basic needs of the affected community, there is no other option for people than to move to another location. Therefore, the collapse of ecosystem services must, together with the adverse effects of climate change, be considered as a critical factor for the occurrence of displacement of people.

This article has three objectives: first, to expose the relationship between and degradation / collapse of ecosystem services and human mobility; second, to examine the legal limitations on international protection of people who move under the influence of these processes; and third, to expose the role of diplomacy in promoting the international protection of environmental migrants and in building solutions for the future.

To meet these objectives we carried out a qualitative and exploratory study, through bibliographic and documentary sources. The procedure was analyzing the content of legal norms, legal literature and technical studies on the topics: i) ecosystem services; ii) climate change; iii) human mobility.

We focused on “thematic analysis”, a method suggested by Minayo (2014), by which the following steps are performed: pre-analysis (floating reading, constitution of the corpus, hypothesis formulation) and exploration of the material (coding, classification, aggregation of data).

The article has four correlated parts. The first (section 2) is devoted to exposing the connection between ecosystem services and human well-being. The second part (section 3) is devoted to presenting the phenomenon of environmental migration in the face of the collapse of ecosystem services in certain regions. The third one (section 4) is dedicated to examining the legal limitations on international protection of environmental migrants. This section delves into the legal limitations for the application of the principle of *non-refoulemen*t in these cases based on the main international legal instruments on the subject (International Covenant on Civil and Political Rights and the Convention and Protocol Relating to the Status of Refugees). The fourth part (section 5), presents the case Ioane Teitiota v. New Zealand, recently tried by the United Nations Human Rights Committee.

Ioane's case is important for the discussions of this article for two reasons. Firstly, the reason that led Ioane to appeal to the Committee was the need for international protection (application of the principle of *non-refoulement*) due to the risk

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to his life because of the worsening effects of climate change in his country of origin (rising sea levels, lack of fresh water because of the contamination by salt water, land erosion, soil unsuitable for agriculture due to land salinization, etc.). In other words, the connection between the effects of climate change and the deterioration of ecosystem services were decisive for Ioane decision to leave the country. Secondly, the Committee's understanding expresses an important political and legal political content on the international protection of environmental migrants.

2 ECOSYSTEM SERVICES AND HUMAN WELL-BEING

Ecosystems provide various services that are essential for the function of the societies. Disruptions of provided services (e.g. cultivated terrestrial plants grown for nutritional purposes; animals reared to provide nutrition; surface or ground water for drinking) can lead to the breakdown of the social fabric, fostering violent disputes over food and water. In the same way, disturbance of regulation services (e.g.: pest and disease control; storm or fire protection; hydrological cycle and water flow regulation, including flood control; control of erosion) can be equally disastrous. Loss of cultural services (e.g.: elements of living systems that have sacred or religious meaning; elements of living systems that have symbolic meaning; characteristics or features of living systems that have a bequest value) can reflect the loss of connection with the homeland or the loss of the identity of a community with their environment.[1]

Anthropic interventions on ecosystems strains their capacity to deliver ecosystem services. When the ecosystems' resilience reaches the tipping points[2], the ecosystem services could decline or even collapse. Jax (2014) highlights that "the existence of ''tipping points'' in human–environmental systems at multiple scales […] is often viewed as a substantial challenge for governance due to their inherent uncertainty, potential for rapid and large system change, and possible cascading effects on human well-being." The decline or collapse of ecosystem services essential

[1] The examples of Ecosystem Services cited in this paragraph are in accordance with the Haines-Young, R., Potschin, M. B (2018).
[2] 'Tipping point' or 'ecological threshold' is defined as a point at which an (ecological) system undergoes a qualitative change, mostly abruptly and discontinuously.

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to a community's livelihood will lead to their displacement to areas where these services are available.

Restoring ecosystems often fails to reverse the loss of ecosystem services, whether due to cost, delay or technical infeasibility. When human intervention triggers the ecosystem's "regime shift", it is difficult to reverse the impact on ecosystem services that generate well-being for communities. Regime shift means a "significant and persistent change in the structure and function of the systems (socio-ecological), with substantial impacts on the set of ecosystem services provided by these systems" (Jax, 2014). In addition to the loss of ecosystem services, the regime shift is also characterized by the impossibility of the ecosystem returning to the state prior to stress. In other words, when subjected to pressure that exceeds their resilience, ecosystems are not able to return to the previous state.

According to the Millennium Ecosystem Assessment (2005), the scarcity of some ecosystem goods and services is the reality in many regions of the planet, affecting mainly the poorest populations. In this sense, the maintenance of ecosystem services is directly linked to Human Rights, as stated from United Nations (2012) Report of Environment and Human Rights:

> Human rights and the environment are inextricably linked and in respect to sustainable development, natural allies. Ecosystem services – including food, clean water, medicinal substances, recreation, and protection from natural hazards such as floods and droughts – are indispensable to the well-being of all people in all places. Loss of such services will increasingly threaten humanity's 'right to development.' […] As repeatedly shown, a healthy environment is a vital factor in promoting human health and life, basic human rights, and creating sustainable development. Ecosystems provide basic necessities of life, especially to the most poor and vulnerable.

The Economics of Ecosystem and Biodiversity – TEEB (2010) draws attention to the fact that "poorer households, in particular in rural areas, face disproportionate losses from the depletion of natural capital due to their relatively high dependence on certain ecosystem services for income and insurance against hard times". TEEB (2010) also warn of "serious consequences for human societies as ecosystems become incapable of providing the goods and services, on which hundreds of millions of people depend". Since communities that depend on ecosystem services can no

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longer access them, staying on their land is not an option. Thus, faced with the collapse of ecosystem services, displacement and migration are an inevitable consequence.

3 ENVIRONMENTAL MIGRATION AND COLLAPSE OF ECOSYSTEM SERVICES

The fact that migrations have occurred because of environmental factors has been the subject of great international concern due to the lack of appropriate legal instruments to promote the protection of those forced to move. In 2018, the Office of the United Nations High Commissioner for Human Rights (2018) published the text, "The slow onset effects of climate change and human rights protection for cross-border migrants", devoting it to an examination of cases in which migration fluxes occurred due to environmental changes resulting from climate change. The cases presented deal with situations identified in different parts of the planet and demonstrate the global nature of this phenomenon. The cases are: (i) South Asia; (ii) Pacific island states; (iii) the Sahel; and (iv) Central America. In all cases, there is a complexity of facts linked to environmental degradation, such as rising levels of poverty, food insecurity and low adaptive capacity. The sum of these factors, which originated from the deterioration of ecosystem services, generates impacts on people, their jobs, means of subsistence and access to natural resources, forcing the populations to move to other territories.

There are countless reports of cases in which environmental and climatic conditions were decisive for the occurrence of human displacement. By consulting the collection of publications of the International Organization for Migration – IOM (United Nations agency for migration), it is possible to identify several case studies referring to migratory flows from at least nine countries / regions. This finding is a strong indication of the growing relevance of this type of migration in global terms and the need to build solutions related to the effective protection of vulnerable people in such contexts. Some of the cases analyzed by IOM are: i) Pacific Island States; ii) Central Mediterranean Region; iii) Kenya; iv) Vietnam; v) Morocco; vi) Republic of Mauritius; vii) Papua New Guinea; viii) Sub-Saharan Africa; ix) Bangladesh.[3]

[3] The list of references mentioned was found on the website of the International Organization for Migration in a search that prioritized the theme "climate change" on April 1st, 2021 (International Organization for Migration, 2021).

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Environmental problems in large-scale which have the potential to generate the collapse of ecosystem services, such as climate change, are producing environmental effects that exacerbate the vulnerabilities of populations, making it difficult for them to survive where they are. As a consequence, the affected populations seek protection in other countries and territories.

> Environmental problems - both sudden and gradual - have always caused different forms of displacement around the world, but recent studies have emphasised that more people are likely to migrate in the future, owing to climate change. Estimates for people likely to be displaced because of environment factors and/or climate change range from 150 to 200 million by 2050. Despite uncertainty over the exact number of people likely to migrate, there is agreement between scholars that the phenomenon of 'environmental migration' will turn worse in coming years, owing to climate change. Under this scenario, an argument has been made to recognise people migrating because of climate change reasons as a separate category of 'climate change displacees' or 'exiles', so that international climate finance can be used directly for their benefit. (Kartiki, 2011)

The Intergovernmental Panel on Climate Change, back in 1992, warned that one of the biggest impacts of climate change could be on human migration. The effect on millions exposed to phenomena such as coastal erosion, floods and severe droughts could generate massive displacements of populations (International Organization for Migration, 2009).

The alert has a logical basis: ecosystem services and the human relationship with the environment affect all important social and cultural events (Black et al., 2011). However, understanding the relationship between the local effects of environmental degradation processes and their relationship to human mobility can be complex.

In these cases, the migrations are motivated by several interrelated causes. The deterioration of ecosystem services interacts with numerous other factors that are equally determinative of the decision to move. These factors also influence the degree to which this decision is, or is not, voluntary. That is, sometimes people may choose to move as an adaptation strategy or to preserve themselves from suffering more damages in the future. This highlights the fact that in many cases migratory movements are not entirely forced, nor entirely voluntary, but an intermediate reality in which several factors contribute to subjects making the decision to leave their country or territory (Office of the United Nations High Commissioner for Human Rights, 2018).

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Another factor that hinders the association between human mobility and environmental events is the fact that the impacts can be considerably different depending on the nature of the environmental events. Some of the events are drastic and have an immediate and obvious impact, for example, hurricanes, storms and floods. On the other hand, serious impacts can also occur through gradual environmental changes that can take months or years to consolidate. Some examples of this phenomenon would be the increase in sea level, the increase in temperatures, the acidification of the oceans, the glacial retreat, the degradation of lands and forests, the loss of biodiversity, desertification, among others. Such events, in most cases, are linked to other social processes that end up causing populations to move. Conflicts over resources, water and food insecurity, soil infertility, political and economic instability are some of the elements that interact in these circumstances (Office of the United Nations High Commissioner for Human Rights, 2018).

Although migratory movements are characterized by their complexity (especially in situations where the cause is associated with environmental degradation), it is possible to identify certain aspects that are decisive for the decision to migrate. In a survey with the inhabitants of the Republic of Marshall Islands[4], Van der Geest et al. (2020) identified that "impacts of climate change on people are often caused by climate impacts on ecosystems and the services they provide," which leads to a decrease in well-being, which leads people to leave the islands, as shown in Figure 1.

[4] This survey in the Marshall Islands, according Van der Geest et al. (2020), "assessed people's views on the current state and trends of ecosystem services." In this sense, the "questionnaire inquired about more tangible ecosystem services that were relevant to people in the study sites: ecosystem provisioning of food, freshwater and fuelwood, and protection against storms and flooding." The authors highlight that, between the RMI inhabitants, "most respondents perceive that the ecosystem on their island is still able to provide food, water, fuelwood and protection, but not enough, and more than a third perceived a negative trend in ecosystem services provision, particularly in the case of food and water provision."

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Figure 1 - The climate migration impact chain (Van der Geest et al., 2020)

With the worsening of environmental problems on a large-scale and the collapse of ecosystem services in different parts of the globe, a legal framework that provides protection to people who leave their territories in search of dignity and better environmental and social conditions to live becomes essential.

The most relevant legal instruments for international protection, and which imply the application of *non-refoulement* principle, are the International Covenant on Civil and Political Rights (ICCPR) and the Convention relating to the Status of Refugees (1951) / Protocol relating to the Status of Refugees (1967). However, these documents are not adequate for the challenges imposed by migrations caused by environmental and ecological degradation.

4 LEGAL LIMITATIONS ON INTERNATIONAL PROTECTION OF ENVIRONMENTAL MIGRANTS

In order to understand the legal limitations related to the international protection of people displaced due to environmental events, it is necessary to carefully examine the characteristics of the main existing regulations. These documents, nevertheless, must be understood beyond their legal content, as they bear the marks of the historical, political and diplomatic context in which they were conceived.

The mentioned documents (ICCPR and the Convention / Protocol relating to the Status of Refugees) are extremely important at the international level. Their

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importance lies in the protection that they promote to people in situations of extreme vulnerability, meeting demands imposed by serious social tensions that compel people to leave their countries.

In the case of the Convention and Protocol relating to the Status of Refugees, its consolidation was marked by historical events that demanded an effective response to the international humanitarian crisis that was in place at that time. Right after the end of the Second World War, with the continuation of migratory movements and the need to protect a large number of people affected by the conflicts, it became imperative to consolidate a single international instrument that would define the legal status of refugees. Instead of agreements dealing with specific situations of refuge, what was required was an instrument that provided a general definition of the concept and of those who would have special protection because of it. Thus, on July 28, 1951, the United Nations approved the Convention relating to the Status of Refugees, which entered into force on April 21, 1954 (United Nations High Commissioner for Refugees, 2019b).

The document, right in paragraph 2, section “A”, article 1, defined that the term “refugee” applies to everyone:

> As a result of events occurring before 1 January 1951 and 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. (United Nations High Commissioner for Refugees, 2020a)

The January 1, 1951 deadline was in line with the willingness of States to limit their obligations in relation to refugee situations that might arise later. However, over time, the need to apply the Convention's protective provisions to new cases of refuge has become evident. As a consequence, on January 31, 1967, the United Nations General Assembly opened for accession to the Protocol on the Status of Refugees, which came into force on October 4 of the same year. When adhering to the Protocol, States are obliged to apply the 1951 Convention, however, without the deadline indicated as a precondition for the recognition of refuge (United Nations High Commissioner for Refugees, 2019b).

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For almost 70 years, these two diplomas form the basis of the refugee protection regime, as they establish a universal code for the protection of people forced to leave their countries. However, these instruments have been complemented and strengthened over the years., It is pertinent to mention: i) Creation of the United Nations High Commissioner for Refugees (UNHCR), whose responsibility is to promote international protection and the search for lasting solutions for refugees; ii) 1969 OAU Convention governing Specific Aspects of Refugee Problems in Africa; iii) 1984 Cartagena Declaration on Refugees; iv) Common European Asylum System; v) 2016 New York Declaration for Refugees and Migrants; vi) 2018 Global Compact on Refugees.

Even with this entire period in force, the 1951 Convention proved to be a “living and dynamic instrument, and its interpretation and application has continued to evolve through State practice, Unhcr Executive Committee conclusions, academic literature and judicial decisions at national, regional and international levels” (United Nations High Commissioner for Refugees, 2019b).

Although there are countless reasons that can lead to forced displacement, the 1951 Convention, by defining the refugee as someone who leaves his country of origin due to a well-founded fear of persecution, ends up excluding a number of situations and assigning a specific reason. From this definition, understood in its strict sense, victims of hunger or natural disasters cannot be recognized as refugees, except when these causes also imply persecution of some nature.

It is important to emphasize the importance that has been attached to the idea of persecution for people being recognized as refugees under the terms of the Convention and Protocol relating to the Status of Refugees. Forced migrations involving serious environmental crises would only be in accordance with the legal framework of refuge when it is possible to identify the existence of some type of persecution associated with that context.

It should also be noted that despite the general rule being the individual assessment of cases in order to verify the presence of the elements that characterize the refuge, there are situations of massive influx of people in which entire groups can be recognized as such given the notoriety of the facts. In these circumstances, due the urgency to assist a large number of people, it would be virtually impossible to examine

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each case in an individual way and still respond with the necessary speed. Along these lines, recognition is called *prima facie* (United Nations High Commissioner for Refugees, 2019a).

As an example, it is worth mentioning that this form of recognition was applied by Brazil to recognize a large number of immigrants from Venezuela as refugees. It happened because of the massive influx of people who had been arriving in the country since 2014. The legal basis for recognition was the Cartagena Declaration, which adopts an expanded interpretation of the refugee concept (United Nations High Commissioner for Refugees, 2019a).

> […] the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order. (Organization of American States, 1984)

The central element for the recognition of Venezuelans in Brazil was the objective factor of the massive violation of human rights and the disturbance of public order in Venezuela due to the economic, political and social crisis that the country faces (United Nations High Commissioner for Refugees, 2019a).

The expansion of the concept of refugee provided by the Declaration stems from the insufficient provision of the Convention Relating to the Status of Refugees. It consists of a recognition by the Parties that the strict application of the definition of refugee present in the 1951 Convention is insufficient to meet emerging humanitarian demands. It can be said that displacements caused by the deterioration of ecosystem services and other environmental events, could be covered by the Cartagena Declaration. However, it would only be possible once the Parties recognize a serious and widespread human rights violation related to such events.

It turns out that, unlike the 1951 Convention, only a limited number of countries are included in the Declaration. Furthermore, it is not a legal instrument such as an international treaty, which binds the Parties in a strict way. For this reason, even if some of the countries recognize environmental migrants presenting the Cartagena Declaration as the legal basis, it would not mean the implementation of an *Erga Omnes*

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obligation – as would be the case in the event of application of the provisions of the 1951 Convention – but an act of diplomatic responsibility in fulfillment of an international commitment.

Another normative framework for the proposed discussion is the International Covenant on Civil and Political Rights (ICCPR). Its relevance lies not only in its content, but also in the context of its constitution, its connection with the Universal Declaration of Human Rights and the contribution it makes to the construction of a global framework for human rights.

In 1966, the two international human rights covenants, the ICCPR and the International Covenant on Economic, Social and Cultural Rights, joined the Universal Declaration. These instruments, according to Carvalho (2019), created the normative basis for a *World Charter of Human Rights* for application on a global scale, as "common heritage, inalienable and inherent to the human condition".

> A normative framework of international law was established with the status close to that of a universal charter, because the world legal order of human rights is governed, as rights that are universal, which are in force beyond the differences that exist between States, under the aegis of the principles of universality, indivisibility and equality.[5] (Carvalho, 2019)

This set of rules consolidated a legal apparatus that allows individuals to invoke international protection in addition to the protection that the legal system of each State must provide to its citizens. "The United Nations (UN) has taken the big step of erecting a common and global normative framework, which applies universally and beyond the differences of each nation" (Carvalho, 2019).

With regard to the ICCPR, the provision in the first part of Article 6 is particularly relevant, which states that "every human being has the inherent right to life. This right is protected by law. No one will be arbitrarily deprived of his life" (United Nations, 1976).

Nevertheless, the application of the protection provided by Article 6 must be associated with some type of arbitrariness capable of depriving someone of their right

[5] The cited excerpt is a translation made by the authors. The original text, in Portuguese, is: *"Estabeleceu-se um quadro normativo de direito internacional com o estatuto próximo ao de uma carta universal, por que se rege a ordem jurídica mundial dos direitos humanos, enquanto direitos que são universais, que vigoram para além das diferenças que existam entre os Estados, sob a égide dos princípios da universalidade, indivisibilidade e igualdade*" (CARVALHO, 2019).

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to life. As in the case of the protection granted to those who fulfill the requirements for characterizing the refugee condition, in this case it is also necessary to have an active element of an external agent imbued with a certain intention. Unlike the first case, in which it is necessary to have a “well-founded fear of persecution”, the existence of some arbitrariness is required here, even if it originated in some internal law of the subject's country of origin.

According to Zeghbib (2012), the inadequacy derives from the fact that the protection of life provided by Article 6 relates to the arbitrariness of States. It is expressed by their irresponsibility in the management and protection against disasters or environmental degradation. In cases that is not possible to identify such acts of irresponsibility (including significant omissions), or if there are not the political and diplomatic conditions for international recognition of this reality by the receiving States (characterizing the protection of the ICCPR), people are exposed to a compulsory return to their countries and to the risks implied thereof (Zeghbib, 2012).

The notoriety of the limitations in international legislation and the urgency to create protection mechanisms motivated several initiatives in order to fill these gaps. Among the efforts at international level to build an appropriate legal structure for humanitarian management of this kind of human mobility, it is relevant to mention some documents from international organizations that portray the historic effort to consolidate such protection. More specifically, it is important to highlight: (i) Resolution Nº. 43/131 adopted on December 8, 1988 by the United Nations General Assembly (1988), on humanitarian assistance for the victims of natural disasters and similar emergence situations; (ii) Resolution 45/100 approved by the same Assembly on December 14, 1990 on the same subject (United Nations General Assembly, 1990); (iii) Resolution 1655 of the Council of Europe (2009). It is worth mentioning paragraph 16 of Resolution 1655 of the Council of Europe, which addresses the lack of appropriate international legal instruments to protect those displaced due to environmental degradation.

> 16. The Assembly observes that whereas there exists a large body of well-established international, regional and national legal instruments, conventions and norms to protect the rights of people forcibly displaced by conflict and persecution, and to some extent by natural disasters or conflicts over resources, many gaps remain in the existing protection framework.

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> Particularly for those considered to have moved due to gradual environmental degradation, there may be normative and operational protection gaps, nationally and internationally. In addition, when it comes to the small island states that risk becoming submerged, there may be a serious gap in the existing international treaties on statelessness. (Council of Europe, 2009)

The call of European Council for the international community (and more particularly the European Union) to produce the appropriate normative for safeguarding human mobility occurred due to processes of environmental degradation remained frustrated. To date, despite the fact that several efforts continue to be made through diplomatic channels, there is no regulation of global or regional scope to such situations.

The countries' recognition of the existence of gaps in international legislation and the need to fill them, however, is an extremely important factor in changing this reality. This is not an issue that is overlooked by the international community. The importance of the question and the previous efforts are generating some important movements and transformations in the understanding of the role of countries in managing the emerging crisis.

5 IOANE TEITIOTA V. NEW ZEALAND: "LANDMARK DECISION WITH POTENTIALLY FAR-REACHING IMPLICATIONS"

Recently, the normative gap has been the object of great international repercussion after the United Nations Human Rights Committee ruled on the case 2728/2016 (Ioane Teitiota v. New Zealand). According to the spokesman of the United Nations High Commissioner for Refugees, Andrej Mahecic, "This is a landmark decision with potentially far-reaching implications for the international protection of displaced people in the context of climate change and disasters" (United Nations High Commissioner for Refugees, 2020b).

Teitiota sought the Committee tutelage after his deportation from New Zealand to his origin country: the Republic of Kiribati. Teitiota claimed that by denying his request for recognition as a refugee and deporting him, New Zealand violated his right

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to life, as provided in ICCPR. The same reasoning was presented in relation to the 1951 Refugee Convention (United Nations Human Rights Committee, 2020).

Teitiota argued that rising sea levels forced him to move to New Zealand. According to him, the situation on the island where he lived (Tarawa), become unstable and precarious due to the advancement of the sea. This phenomenon affected the availability of fresh water because of the contamination by salt water and overcrowding. In addition, an unprecedented housing crisis was occurring as result of land erosion, which sparked disputes that caused countless deaths. According to him, Kiribati had become an unsustainable and violent place for the author and his family (United Nations Human Rights Committee, 2020).

Although the decision does not address the reality faced by other Island States in the region, it is important to note that this phenomenon affects most of the archipelagos. This is causing social tensions, resource disputes and high rates of emigrations. Heslin (2019), in her article “Climate Migration and Cultural Preservation: the case of the Marshallese diaspora”, points out that the Republic of the Marshall Islands (a State geographically close to the Republic of Kiribati) has also been experiencing an intense process of emigration due to the effects of climate change. Heslin (2019) draws attention to the fact that in 2011, 53,158 (fifty-three thousand, one hundred and fifty-eight) Marshallese lived in the Islands, while 22,434 had already left the country to live in the United States. This means that a decade ago, about 30% of citizens had already left their country of origin due to the deterioration of ecosystem services in the islands, and to the social conflicts/difficulties that ensued (Heslin, 2019).

Despite the seriousness of the events and the fact that other countries are also being deeply affected, the lack of a legal framework for the protection of displaced people in these situations binds the decisions of any international body with jurisdictional function, including the UN Human Rights Committee. Thus, the Committee understood that New Zealand acted appropriately and observed its international obligations provided by the documents mentioned as legal basis for Teitiota's plea. Both, New Zealand and the Committee, understood that Teitiota was not exposed to a personal risk of being persecuted if he were returned to Kiribati. This understanding is based on the interpretation that Teitiota was exposed to the same risks and conditions as other citizens of Kiribati.

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Therefore, the element that characterizes the refuge's legal status, fear of persecution, was lacking. In addition, the arbitrariness that would justify the protection provided by the ICCPR was not identified, since the process of evaluating Teitiota's asylum application was duly followed by New Zealand jurisdiction, respecting all the applicant's rights. The Committee also noted the understanding that the Kiribati government was taking several actions aimed at adapting to the effects of climate change and promoting the protection of its population. For this reason, it also expressed the opinion that such protection modality could not be evoked on basis of any arbitrary action or omission by Kiribati government with regard to management of the islands' environmental deterioration (United Nations Human Rights Committee, 2020).

Despite this, the decision does not fail to present an important innovation regarding the possibility of applying the principle of *non-refoulement* in analogous cases to that of Teitiota. Both, the New Zealand Supreme Court and the UN Human Rights Committee, expressed the understanding that the “environmental degradation resulting from climate change or other natural disasters could ‘create a pathway into the Refugee Convention or other protected person jurisdiction.’” (United Nations Human Rights Committee, 2020).

> Both sudden-onset events (such as intense storms and flooding) and slow-onset processes (such as sea level rise, salinization, and land degradation) can propel cross-border movement of individuals seeking protection from climate change-related harm. The Committee is of the view that without robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the non-refoulement obligations of sending states. Furthermore, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized. (UNITED NATIONS HUMAN RIGHTS COMMITTEE, 2020)

However, the evaluation of the conditions for triggering the ICCPR obligations, as mentioned by the Committee, is competence of States. The Committee presented a series of considerations regarding the violations of the right to life included in the scope of article 6: (i) the right to life cannot be properly understood if it is interpreted in a restrictive way, and its protection requires that States adopt positive measures; (ii)

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the right to life also includes the right of people to enjoy life with dignity and to be free from acts or omissions capable of causing their unnatural or premature death; (iii) the obligation of States to respect and guarantee the right to life extends to reasonably foreseeable threats and life-threatening situations that may result in loss of life; (iv) there may be a violation of article 6 of the Covenant, even if these threats and situations do not result in loss of life; (v) environmental degradation, climate change and unsustainable development are some of the most urgent and serious threats to the capability of present and future generations enjoy the right to life (United Nations Human Rights Committee, 2020).

Notwithstanding the important political and legal content of the decision, it should be noted that attributing to States the competence to recognize the objective factors that motivate migratory fluxes resulting from processes of environmental degradation, which is done is to ratify the international protection of these people, depends on diplomatic positions expressed by the receiving countries. Unlike the cases in which there is a *perfect* normative framework applied to the facts, provided by documents such as the International Covenant on Civil and Political Rights and the Convention / Protocol Relating to the Status of Refugees, cases of environmental migration keep depending on the voluntarism of States to generate some protection for these people. It happens because there are not legal instruments that expressly impose *Jus Cogens standards* and *Erga Omnes* obligations for the States. Nevertheless, it does not detract from the relevance of the decision, but rather indicates that there is an important political movement at the international level that is aimed at promoting the protection of environmental migrants through diplomatic channels, encouraging States to adopt positions of responsibility and commitment to these people.

6 FINAL CONCLUSIONS

Although the decision did not directly benefit Teitiota, it demonstrated that: i) there is an intimate relationship between the collapse of ecosystem services and human mobility; ii) the main international legal instruments that provide for the

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application of the principle of *non-refoulement* are not adequate to protect environmental migrants; iii) the construction of lasting solutions and the immediate protection of environmental migrants depend on diplomatic efforts.

The case of Teitiota highlights the need for cooperation in building effective solutions at the international level for the crisis of environmental migration. The role attributed to Nation-States to recognize the processes of environmental degradation capable of causing the risk to the right to life and the protection provided for by the ICCPR confirms the current centrality of diplomatic relations for the protection of environmental migrants.

In this context, diplomacy ends up being the main factor in effecting the protection of these people, faced with the lack of appropriate international standards. It occurs because the act of recognizing the need and legitimacy of a population in requiring protection from another country implies a certain diplomatic positioning by the receiving country in relation to the country of origin. A Nation-State, in recognizing that people leave their country due to the difficulties caused by environmental degradation and the collapse of ecosystem services, is assuming that these States are failing to guarantee basic human rights (especially the right to life) to their citizens.

In addition, the decision to recognize this reality and support people on the move also has practical consequences for the recipient country. In assuming that the population of a country demands international protection and that these people are protected by the principle of *non-refoulement*, the receiving State must be prepared to coordinate the migratory flow that will be established. Unlike a typical refugee situation, in which each case is assessed individually in order to verify the existence of a “well-founded fear of persecution”, recognition in this case must be *prima facie*. Since the conditions that generate the need for protection are objective and affect people in a broad and generic way (regardless of their particularities), what one would see is the establishment of a migratory flow of great proportions. This would occur because all people from the areas affected by the deterioration of the ecosystem services would be exposed to the same risks.

In these circumstances, both the recognition of the need for protection and the operationalization of it have a diplomatic character. The eventual inability to carry out the humanitarian management of a migratory flow of great proportions, triggered by

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the recognition of the threat to the right to life resulting from the environmental degradation of a country, would certainly have repercussions for the international relations of the receiving country. Therefore, it is not just a matter of taking a stand in relation to the country of origin, but also of establishing a humanitarian commitment to the international community.

Betts (2013) argues that given the lack of specific regulations and the broad interpretive spectrum of the word “deprivation” (provided by the ICCPR), it is politics, not the Law, what determines the fate of these people. This is an emerging challenge for world politics.

Teitiota's case is just an example about the reality of millions of people living in the different islands located in the Pacific. Furthermore, although the case of the Pacific Islands is an important case for understanding the phenomenon of the collapse of ecosystem services as a cause for migratory movements, it is necessary to know that phenomena of this nature are occurring all over the planet.

As an example, it is relevant to mention some of the data contained in the Report “United in Science 2020: a multi-organization high-level compilation of the latest climate science information”, produced by the World Meteorological Organization. According to the document, since 2016, droughts have caused major economic and social impacts worldwide. In Africa food insecurity affects millions of people. Between 2016 and 2017, 6.7 million people in Somalia suffered from a lack of food due to droughts and the inability to cultivate the land. In 2018 and 2019, drought affected several countries in southern Africa, affecting Zimbabwe with particular intensity. The Report points out that these events were strongly influenced by high sea surface temperatures in the western Indian Ocean (World Meteorological Organization, 2020).

These data demonstrate the inseparability between ecosystem services, the right to life and human mobility. The global nature of the theme requires the construction of joint solutions. The cooperation of countries is indispensable to face the deterioration of ecosystem services due to large-scale environmental problems such as climate change, as well as for the management of migratory flows that occur as result of it.

It is becoming increasingly necessary to establish international standards that fill the gaps in current international legislation. Several experts in Human Rights and

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International Law[6] argue that a new humanitarian convention should be convened in order to establish the legal bases for the protection of environmental migrants (Bétaille, 2010).

With a well-defined legal basis, the protection of these people will not depend (almost exclusively) on the diplomatic acts of the countries. It can be said that the construction of appropriate international legislation, as well as the current protection of environmental migrants, are still two of the great challenges for global diplomacy.

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[6] In 2008, a group of academics from Limoges, specialists in human rights and international law, faced with the need for a new legal instrument for the protection of environmental migrants, prepared a "draft Convention on the International Statute of Environmentally Displaced Persons". The publication of this project contributed to the renewal of the legal debate by providing a concrete proposal for the discussion of the content of possible legal protection (Bétaille, 2010)

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