

Research on the definition and protection of "Environmental Refugees" from the perspective of international refugee law

Hongyin Chen

China Pharmaceutical University, Nanjing 210000, China.

chenhongyin100@hotmail.com

Abstract

Global warming has led to a sustained rise in sea levels, severely affecting the living environment of some small island states. This has inevitably led to a particular group called "Environmental Refugees." However, the definition and attribution of this group remain void, leading to a deficiency of its protection under international law. This paper, therefore, uses case and comparative analysis methods to explore the definition and potential protection for "Environmental Refugees" from the perspective of international refugee law. The "Environmental Refugees" concept, with its objective origin, emphasizes the need for international cooperation in providing protection, which is more in line with the core characteristics of this group. Regarding international legal protection, the "Environmental Refugees" concept should be progressively extended to the scope of traditional refugees, clarifying the fundamental principles for determining and hosting this particular group and advocating the "common but differentiated responsibilities" for every host country. Furthermore, international society should promote establishing and improving relief and litigation channels for "Environmental Refugees" within the framework of international refugee law, highlighting the importance of collective action in addressing this issue.

Keywords

Environmental Refugees; International Refugee Law; Protection in international law; Regional cooperation.

1. Introduction

1.1. The protection dilemma of "Environmental Refugees" under international law

Climate change, a significant issue in international society, has brought the refugee problem to the forefront. The World Meteorological Organization (WMO) data in the "Indicators of Global Climate Change 2022" reveals a more than doubled global average sea level in the past decade [1], a clear sign of the irreversible impact of global warming on sea level rise. The Intergovernmental Panel on Climate Change (IPCC) "AR6 Synthesis Report: Climate Change 2023" predicts a rise in the global sea level between 26 to 77 centimeters by 2100 [2], threatening to inundate most low-lying areas and island countries. The urgency of the issue is underscored by the fact that at the beginning of this century, indigenous peoples in some Pacific island countries were forced to become displaced "Environmental Refugees" due to rising sea levels. Tuvalu, a typical representative country, has become the first country in the world to plan to immigrate the entire country to New Zealand due to environmental reasons.

However, the urgency of relief for "Environmental Refugees" is at odds with the stark reality of the lack of access to redress. The number of "Environmental Refugees" who have suffered natural disasters, like the indigenous people of Tuvalu, Kiribati, Maldives, and Marshall Islands, is increasing gradually. On the other hand, there are no binding legal provisions for this group,

and therefore, their plight has become increasingly prominent under the existing international legal system. The reason is that unlike traditional refugees defined by the 1951 Refugee Convention, refugees caused by climate change are not persecuted due to political or religious persecution, and the international legal definition of the refugees category has not yet incorporated the "Environmental Refugees" concept. In other words, under the framework of international refugee law, groups displaced due to environmental changes are not the traditional protection targets. Accordingly, the resulting international legal disputes and litigation cases have intensified the exploration of the "Environmental Refugee" issue. As famous legal cases, both the "Ioane Teitiota case" and the "Sigeo Alesana case" reflect the plight of this particular group in international refugee law.

Therefore, the legal status of "Environmental Refugees" involves protecting displaced groups' rights and the progress of the international refugee law system. At the same time, the protection under international law not only involves the right to survive and thrive but also touches upon the national interests of host countries. Therefore, "Environmental Refugees," a term full of disputes between theory and practice, international obligations, and national sovereignty, must be reconstructed within the framework of international refugee law. Moreover, the "Environmental Refugees" protection path should also be consistent with the core principle of international refugee law.

1.2. Literature review

Given its potential impact, the term "Environmental Refugee" is a matter of significant concern in academic circles. Scholars have presented diverse opinions on the definition and protection of this group under international law. However, the majority recognize the severe situation of the "Environmental Refugee" group in reality and stress that their inclusion in the refugee category is pivotal for addressing the issue.

1.2.1. Current status of Chinese research

The definition of "Environmental Refugees" by Chinese scholars includes two attributes - first, the reasons for the group's transnational intentions, which mainly include "environment" and "climate"; second, the reasons for the group's transnational behavior nature, divided into three categories: "refugees," "immigrants" and "displaced persons." After a comparative study, some scholars concluded that these definitions are mismatched and advocated that the term "Environmental Refugees" should be avoided when studying issues in this field to avoid ambiguity [3]; some scholars are neutral, indicating that the core driving force behind migration is primarily due to the environment [4]. In addition, Chinese scholars have discussed the protection of "Environmental Refugees" involving the core principles and customary laws of international refugee law, human rights law, and climate change law. However, it is essential to note that some scholars have also focused on resolving controversial approaches in judicial practice but have been subject to the limitations of litigation cases by varying degrees, highlighting the challenges in the field.

1.2.2. Current status of global research

"Environmental Refugees" was coined in the 1970s by Lester Brown [5]. Later, it began to be used by international organizations, but some criticized it. For example, two scholars, McGregor and Kibreab, severely criticized this term for its confusion, arguing that it oversimplified the complex reasons for migration and could lead to neglecting other important factors [6]. Some scholars have tried to replace it with "eco-migrant," but with little success; the United Nations Refugee Agency (UNHCR) proposed the concept of "environmentally displaced persons" in 2007 [7], but this has remained the exact status of the academic debate. Regarding the issue of "Environmental Refugees" under the international legal framework, some scholars advocate the establishment of an independent international organization to protect "Environmental Refugees" and the signing of a particular international convention to address this

issue [8]. Some also advocate optimizing refugee identification procedures and tools [9]; some believe that the solution should not be limited to defining refugee status but lies in the decisive role of environmental variables in shaping population mobility decisions [10].

1.2.3. Research methods and innovations

This article innovates in research perspectives and viewpoints by using literature research, case analysis, and comparative analysis. It is committed to determining and exploring the definition and protection issues of "Environmental Refugees" from the perspective of international refugee law.

2. Debate over the definition of "Environmental Refugees"

2.1. The "Tetiota Case"

After Lester Brown first proposed the concept of "Environmental Refugees" in 1976, the United Nations began to officially use the term in the title of its "1985 Environmental Plan Report" [11]. The definition and status of "Environmental Refugees" are also reflected in typical cases from then on. Among them, the "Tetiota case" is a landmark case, which, for the first time, legally confirmed the development dilemma of "Environmental Refugees" and triggered a discussion in the academic community on the status of this group.

2.1.1. Overview of the "Tetiota Case"

Tetiota was a wave erosion and destruction victim in Kiribati and the world's first "Environmental Refugee" [12]. 2007, Tetiota and his wife moved to New Zealand on a work visa. The couple had three children four years later. However, at that time, Kiribati was already facing irreversible environmental damage. After understanding the fact, the couple appealed to the New Zealand government to extend their visas when they expired. Their lawyers also believed this would eventually evolve into a question about "the making of a climate refugee" [13]. However, no matter how often Tetiota applied to seek refugee status for his family, his appeals were rejected by the New Zealand High Court and Court of Appeal. At the same time, a New Zealand court determined that the Tetiota family did not belong to the category of "refugees" and eventually deported Tetiota and returned them to Kiribati. After that, although he applied to the United Nations Human Rights Committee, believing his human rights were violated, the organization ultimately did not support his claim [14]. This case has attracted academic attention to the rationality and legality of "Environmental Refugees." It has also become a discussion on a new definition of refugees within the framework of international refugee law.

2.1.2. The dilemma of defining "Environmental Refugees"

The core dispute in the "Tetiota Case" ultimately involves the issue of whether "Environmental Refugees" can be classified as "refugees" under the 1951 Refugee Convention. The 1951 Refugee Convention and the 1967 Protocol, a supplementary document that extends the scope of the Convention, are essential legal documents that define refugees and determine their rights and obligations. The Refugee Convention defines a "refugee" as "a person who has a well-founded fear of persecution on account of race, religion, nationality, membership of a particular social group or political opinion, and who is outside [their] country of nationality and who, because of that fear, is unable or people unwilling to take advantage of the country's protections" [15]. Although internally displaced persons caused by climate and environmental change do not currently fall under the definition mentioned above of "refugees," "Environmental Refugees" can still be defined according to their constituent elements as "due to the permanent deterioration of the living environment, resulting in the individuals or groups who are forced to seek permanent relocation in a transnational manner due to severe threats to their right to existence and life."

2.2. Analysis and selection of concepts related to "Environmental Refugees"

Concepts similar to "Environmental Refugees" include "Climate Refugees," "Climate Immigrants," "Environmental Immigrants," and so on. These terms are derived from the same context as "Environmental Refugees" and have different emphases, but each has a certain rationality and progress. What is certain is that the current academic debate on the definition of "Environmental Refugees" mainly involves the following two points: first, "environment" or "climate"; second, "refugee" or "immigrant."

2.2.1. "Environment" is better than "Climate"

The controversy between "environment" and "climate" calls for a paradigm shift in our understanding of the origins of this particular category of internally displaced persons (IDPs). The reason for preferring to use "climate" in naming is that it reflects the natural reasons for the displacement of particular groups, that is, the irreversible destructive effects of global warming, such as rising sea levels. This view has a certain rationality, but this article argues for a change and chooses the word "environment" for three reasons:

First, based on conceptual connotation, "environment" is closer to human beings' necessary right to survival. Although "environment" and "climate" are related and interact with each other, in this discussion, global climate warming is one of the indirect causes of permanent damage to the environment. On the contrary, permanent damage and irreversible changes to the natural environment, such as seawater submerging the country and desert covering the territory, can be said to be the most direct cause of large-scale IDPs and the greatest threat to their right to survival.

Second, based on conceptual extension, the external scope of the word "environment" is impressively comprehensive. Unlike the term "climate," which is limited to natural ecological systems, the concept of "environment" can be extended from the primary natural environment to the social environment category. This comprehensive scope informs about its broad applicability and the addition of more flexible factors in the specific practice process.

Third, based on conceptual adaptability, using "environment" is more conducive to being accepted by the existing logic of refugee definition. The use of the term "environment" in the field of refugees will, on the one hand, expand the scope of refugees with some limitations; on the other hand, its denotative concept of social environment will also be well adapted to the original international refugee law system.

2.2.2. "Refugee" is better than "Immigration."

The dispute between "refugees" and "immigrants" involves core principles determining whether this group is accepted by international refugee law. The term "Environmental Migrants" or "Climate Refugees" has been put forward under pressure from some perspectives, and some scholars have expressed concerns about the consequences of misuse of this concept [16]. Therefore, concepts such as "Environmental Migration" have seemingly become the "best choice" to avoid the tendentious and controversial concept of "refugee."

However, in a world where climate change is becoming increasingly severe, the large and growing number of people displaced by environmental change should not be ignored. This article tends to classify "displaced groups caused by permanent changes in the environment" into the category of "Environmental Refugees," mainly for the following two reasons:

First, the term "refugee" places greater emphasis on the group's involuntary forced displacement due to changes in the environment. Under the current framework of international refugee law, becoming a "refugee" requires the following five elements:

There are sufficient specific reasons for forced relocation.

Permanent or temporary relocation.

Crossing national borders.

Actively or passively give up the protection of the country of original nationality.

If they continue to live in the country of their original nationality, their life will be seriously threatened.

Among them, "forced migration" (the involuntary movement of people from their homes due to environmental factors) and "serious threat to life" (a situation where the basic right to survival and health is seriously jeopardized) are the critical and necessary conditions for determining refugees. Accordingly, the term "Environmental Refugees" meets the "forced migration caused by permanent changes in the surrounding living environment." The two core elements are "due to the deterioration of the living environment" and "the basic right to survival and health has been or is being seriously threatened."

Second, the "Environmental Refugees" concept clarifies that this group should receive equal protection for refugees under the existing international refugee law framework, which helps to increase the international community's attention. Unlike "immigration," which involves seeking better economic conditions, "refugee" has serious political overtones. In addition, most countries where IDPs frequently occur are underdeveloped countries in the world economy and need more land and advanced infrastructure systems. This series of negative factors highlights the plight of "Environmental Refugees" who lack protection under international refugee law. As mentioned, the preferential use of "Environmental Refugees" will promote the importance of this concept in the international refugee law system and even be entirely accepted by the definition of "refugee."

3. The protection dilemma of "Environmental Refugees" under international refugee law

In addition to the issue of definition and attribution of "Environmental Refugees," the dilemma of the absence of legal principles and the unclear responsibilities of the host countries of "Environmental Refugees" cannot be ignored. Although the negative impacts of environmental change have attracted the international community's attention, at the legal level, international refugee law still lacks explicit provisions and consensus on protecting this particular group. It has also triggered a series of contradictions and dilemmas between the term and relevant international law subjects under the law system.

3.1. The legal absence and contradictory expressions of "Environmental Refugees."

The central dilemma regarding "Environmental Refugees" under the international legal framework lies in the apparent absence of legal principles and contradictory statements about them in international treaties.

3.1.1. The apparent absence of status quo at the legal level

The absence of "Environmental Refugees" at the legal level is mainly reflected in the current international legal system's lack of legal application principles and legal normative provisions on the legal status, fundamental rights, and protection methods of "Environmental Refugees." The cause of this term lies in irreversible environmental changes under the influence of climate. International environmental conventions and declarations based on this have reached a consensus on the negative impact of environmental change on the population of environmentally fragile areas, especially in developing countries. However, concrete elaboration on the special refugee groups created by the environment still needs to be made. Specifically, the primary source of the problem of "Environmental Refugees" is climate change. Correspondingly, Article 4 of the United Nations Framework Convention on Climate Change (UNFCCC), the primary Convention on international climate change and environmental

governance, mentions possible adverse impacts of changes on small island countries and countries with low-lying coastal areas [17].

However, the Convention's failure to acknowledge the inevitable causal link between climate change and irreversible environmental deterioration for climate-displaced groups, and its omission of the term "Environmental Refugees," presents an opportunity for change. Using proper terms such as "refugees," we can call on the international community to pay more attention to this particular group and provide exceptional protection. Recognizing "Environmental Refugees" could significantly improve in their legal status, fundamental rights, and protection methods.

In addition, the "1951 Refugee Convention", which examines the fundamental disputes over the protection of "Environmental Refugees," does not include any climate or environment-related expressions in its second part of the normative provisions on protecting the basic rights of refugees. Therefore, the fundamental rights of "Environmental Refugees" are not protected at the legal level under the current framework of international refugee law, and disputes represented by the "Tetiota Case" and the "AD (Tuvalu) Case" controversial judgments also followed [18].

In short, "Environmental Refugees" are subject to disputes over the suitability of the definition of objects protected by traditional international refugee law under the current framework and have been absent from the seat of international legal theory.

3.1.2. Contradictory expressions in international treaties

The broad expression of "Environmental Refugees" in international law implies an inevitable contradiction between theory and reality. In response to these contradictory statements, this article does not entirely deny the efforts made by international law to promote the protection of "Environmental Refugees" but instead elaborates on the practical contradictions and dilemmas from the specific perspective of "Environmental Refugees" caused by permanent environmental changes. It also highlights the potential for improvement in the legal framework, offering hope for a more effective system.

On the one hand, international treaties related to refugees and migration increasingly focus on the catalytic effect of the environment in accelerating the process of refugee formation. For example, "The Global Compact for Migration" states the severe threats to the climate and environment, calls on countries to confront the current situation of migration flows and promote international cooperation [19]; on the other hand, current legal dilemmas faced by "Environmental Refugees" and the IDPs have not been clearly stated and defined.

In addition, as a comprehensive framework convention in response to the global refugee issue, "The Global Compact for Migration" not only states that climate, environment, and natural disasters do not constitute the essential elements of the concept of refugees but also recognizes that the "two factors" of the environment have an essential role in causing the refugee crisis. The driving influence of refugee displacement continues to grow.

Today, the international community is paying increasing attention to climate-displaced persons and "Environmental Refugees," the driving factors of climate and environment for "Environmental Refugees" have gradually emerged. However, these protections are only principled discussions in nature and do not involve explicit expressions of the permanent threats to "Environmental Refugees," the status quo of forced displacement, and the absence of legal principles.

3.2. The legal responsibilities of host countries for "Environmental Refugees" have not yet been clarified

Another dilemma closely related to the absence of legal principles for "Environmental Refugees" is that the current international law has not clearly defined the responsibilities of

host countries for "Environmental Refugees." Specifically, this limitation is reflected in the "macro-solicitation of the scope of the host country's responsibilities" and "blurring of the size of the responsibilities between host countries."

3.2.1. Macro-solicitation of the scope of responsibilities of host countries

The principled conventions under the current international refugee law system determine the definition of the host country's scope of responsibility, which needs to be more accessible and refined. In the face of global environmental changes, the international community continues to call on countries to seek cooperation to prevent and resolve legal issues caused by large-scale transnational population movements. However, the responsibilities of host countries still need to be clarified. For example, the "New York Declaration on Refugees and Migrants" not only considers the issue of population mobility under climate and environmental change but also actively encourages host countries to provide assistance based on national capabilities and international legal obligations [20]. Admittedly, this Declaration promotes the definition of the overall responsibility of refugee-hosting countries under international law. However, issues such as whether host countries are obliged to accept "Environmental Refugees" and the specific content of their obligations need to be further clarified and refined. It is undeniable that the division of labor and cooperation of the international community is also one of the crucial ways to solve the current plight of "Environmental Refugees." However, the complexity and randomness of the actual situation far exceed the scope of theoretical discussion. The legal responsibilities of the host country should not only be comprehensively Constraints should be defined and divided in detail.

3.2.2. The blurring of responsibilities between host countries

Given the long-term and arduous nature of the "Environmental refugees" problem, the division of host countries and the size of their responsibilities constitute the premise and are critical to international cooperation. Compared with international environmental issues, "Environmental Refugees" involve more international social entities and more complex stakeholders, mainly including the source countries of "Environmental Refugees," possible cross-border countries, and the host countries. However, considering the equality of national sovereignty of host countries, the differences in national capabilities, and the reality of ensuring internal security, current international law does not strictly constrain and divide the responsibilities of "Environmental Refugees."

The most representative of these is the "Global Compact on Migration," which pioneered the principle that countries should decide on their own whether to admit cross-border populations. However, this Convention lacks a legally binding force and reflects the current international law's responsibilities to each country, which remain different. In addition, as rising sea levels erode and submerge their territories, the "Environmental Refugees" countries of origin are also encountering difficulties in seeking international cooperation. The fact that their territories are gradually submerged also poses severe challenges to international law [21]. Therefore, under the temporary absence of the protection issue of "Environmental Refugees," it is crucial for the international community to divide the responsibilities of the host countries of "Environmental Refugees" and how to stipulate the international obligations to assist the countries that produce "Environmental Refugees."

3.3. Lack of legal remedies and appeal channels for "Environmental Refugees."

Another essential problem "Environmental Refugees" currently faces is the lack of adequate legal remedies and appeal channels consistent with the international legal system. This dilemma is first reflected in the classic international appeal cases of "Environmental Refugees." As a pioneering lawsuit against "Environmental Refugees," the "Tetiota Case" reflects this group's particular legal protection dilemma and demonstrates the lack of legal relief and channels for international judicial complaints. Although Tetiota filed a complaint with the

UNHCR, it failed due to a lack of persuasive evidence. Influenced by the "Tetiota case," the New Zealand government also considered trying to create a "climate refugee visa" for "Environmental Refugees" from Pacific island countries in 2017 [22]. However, this move cannot fundamentally provide sustainable legal protection for "Environmental Refugees," nor does it apply to the current situation of all host countries. Given the differences in the objective development status and political and judicial systems of various countries, not all countries have the ability to host "Environmental Refugees," and not all countries where "Environmental Refugees" apply for "climate refugee visas" can be included in the hosting countries. Therefore, balancing the needs of "Environmental Refugees" and potential host countries in legal relief and appeal channels is difficult.

Coincidentally, domestic groups on the edge of "Environmental Refugees" also encounter relief and appeal bottlenecks in climate complaints. Driven by climate and environmental degradation, a group of Indian tribes in the United States submitted a petition to 10 United Nations special rapporteurs in 2020 [23]. This is essentially a domestic lawsuit brought by the "Environmental Refugee" group in the climate field, and this type of litigation will continue to grow along with environmental changes. Additionally, in the "2022 case of Pabai Pabai and Guy Paul Kabai v the Australian Government", the Gudamalulgal Nation of the Torres Strait Islands Aboriginal people have challenged Australia's failure to reduce greenhouse gas emissions, claiming the Government's inaction will force them into climate migration [24]. Although many climate and environmental appeals cases are mentioned above, none touch on the impact of "Environmental Refugees." The issue of international legal relief for these groups has not fundamentally contributed to environmental compensation or even permanent resettlement assistance for climate-displaced persons.

4. The protection path of "Environmental Refugees" under international refugee law

After analyzing the three practical dilemmas "Environmental Refugees" currently encounter under international refugee law in the above chapters, this article believes that we can "formally incorporate into the international refugee framework" "determine the principles of accommodation and the responsibilities of potential host countries," and "broaden relief and appeal channels under international law." "Three aspects will expand the international legal protection channels for "Environmental Refugees."

4.1. Officially incorporate "Environmental Refugees" into the international refugee framework

As climate warming and sea levels continue to rise, the living environment of indigenous peoples in small island countries has suffered permanent damage. However, international refugee law does not explicitly include "Environmental Refugees" in the legal protection system. Therefore, clarifying the international legal status of "Environmental Refugees" and incorporating "Environmental Refugees" into the international refugee law framework will not only help respond to the "definition dispute" in Chapter 2 but also help to straighten out "Environmental Refugees" at the level of international law—contradictions and dilemmas of conservation.

4.1.1. Gradually expand the definition of refugees, starting from regional provisions

First, incorporating "Environmental Refugees" into the international refugee framework does not happen overnight, but we should gradually expand the coverage of the current refugee definition. The constituent elements and complete "Environmental Refugees" definition should first be incorporated into the regional refugee supplementary document and then appropriately incorporated into the Refugee Convention when sufficient conditions are met.

It is not yet feasible to directly include "Environmental Refugees" in the definition of the Refugee Convention. Specifically, there are two reasons:

First, directly expanding the refugee definition of the Refugee Convention is complicated and unreasonable. Although the Refugee Convention and its Protocols serve as introductory provisions of international refugee law and play a decisive role in solving the problem of "Environmental Refugees" problem, they are very strict in determining refugee status and only involve factors related to politics and religion. The traditional refugee status has yet to be revised since 1951. Moreover, the Refugee Convention and its Protocol are essential legal documents and are unlikely to be directly modified or overturned.

Second, extensive case support is lacking for including "Environmental Refugees" in the Refugee Convention. Although there are currently transnational cases of "Environmental Refugees" applying for visas, such as the "Tetiota case" and the "AD (Tuvalu) case," such cases do not involve all regions of the world. However, they are mainly concentrated in Pacific island countries, and the cases near Oceania in the southern hemisphere still need to be as global and widespread as the cases. In addition, the current academic community still needs to fully accept the concept of "Environmental Refugees." Therefore, there is excellent practical resistance to directly incorporating "Environmental Refugees" into the "Refugee Convention."

On the contrary, it is more feasible to first expand the core components and complete concepts of "Environmental Refugees" in the regional supplementary document on international refugees, which is in line with the development law of international refugee law and is also conducive to solving the problem of "Environmental Refugees." By reviewing the international refugee law system, the definition of refugees shows a "concentric circle" development model-taking the definition in Article 1 of the Refugee Convention as the core and interpreting the definitions of specific regional instruments outwards. For example, regional instruments in Africa and Latin America set precedents: Article 1 (2) of the 1969 OAU Convention Governing Certain Particular Aspects of Refugee Problems in Africa expanded the core definition of the Refugee Convention to include external aggression and public Disorder [25]; Furthermore, Conclusion 3 of the 1984 Cartagena Declaration expands the core definition of the Refugee Convention to human rights violations [26]. The regional instruments listed above provide practical breakthroughs and reference precedents for including "Environmental Refugees" in the international refugee law framework.

Since "Environmental Refugees" occur mainly in the Pacific and its adjacent areas, these small island countries can lead regional cooperation. In the process of striving for the formal inclusion of "Environmental Refugees" into the international refugee framework, countries where "Environmental Refugees" are located may wish to refer to the above-mentioned supplementary instruments in Africa and Latin America, relying on the Alliance of Small Island States and the Pacific Islands Forum, actively cooperated with the International Refugee Agency to expand the core definition of refugees and incorporate "Environmental Refugees" into the international refugee law system.

4.1.2. Enhance the uniformity and standardization of the expression of "Environmental Refugees" in international treaties

Given the current situation, where the expression "Environmental Refugees" in international treaties is inconsistent and somewhat contradictory, this article recommends enhancing its uniformity.

First of all, the primary task of promoting the standardized expression of "Environmental Refugees" is to deeply explore the relationship between "environmental degradation" and "forced migration" and clarify the objectivity and forced nature of the "Environmental Refugee" issue. Although the "Global Compact on Refugees," as a framework convention on international refugee law, has stated that the root cause of refugee problems caused by global climate,

environmental, and natural disasters lies in the country of origin of refugee flows, the fundamental reason for the flow of "Environmental Refugees" remains unclear. However, there needs to be more elaboration, and the above discussion is only partially consistent with the objective causes of this problem - global climate warming and sea level rise, rather than the initiative of the refugee source country. The "Global Compact on Refugees" also did not clearly explain the causes of "Environmental Refugees" and how to protect them in its follow-up program. Therefore, international refugee law should optimize the objective explanation of the causes of "Environmental Refugees" and promote unified and standardized expression in international treaties.

Furthermore, establishing a specialized international treaty on the issue of "Environmental Refugees" under international refugee law is the proper means of coordinating the expression of "Environmental Refugees" in international treaties. Reviewing the current international refugee law and relevant treaties, when it comes to the phenomenon of "migration and refugees" caused by environmental degradation and climate change, it is inevitable to invoke the core treaties under the international climate change law framework. However, this move did not truly explore the issue of "Environmental Refugees" in depth within the framework of international refugee law. For example, Section 1, Article 18 of the "New York Declaration on Refugees and Migrants" only mentions the "Sendai Framework for Disaster Risk Reduction 2015-2030". The two major international conventions on climate change, "the Paris Agreement," only point to the "provisions on refugees and migrants" in the "Addis Ababa Action Agenda of the Third International Conference on Financing for Development" when it comes to the issue of "Environmental Refugees"; Article 39, Clause 2, of the "Global Compact for Safe, Orderly and Regular Migration (Global Compact on Migration)" takes the 2030 Agenda for Sustainable Development as the solution path. It emphasizes the relationship between international cooperation and the promotion of irregular migration caused by environmental disasters. The above international climate and environmental change framework documents focus not on the refugee issues caused by "environment and climate." Even if such issues are involved, they are limited to the level of principled protection, international legal status, and specific protection of "Environmental Refugees." The method is vaguely explained.

Therefore, given that the issue of "Environmental Refugees" is essentially a refugee protection issue, it is necessary to elaborate on and provide for it in the form of a special convention within the framework of international refugee law. Specifically, a global conference of parties should be convened with the International Refugee Agency as the center to promote the final formation of the "Environmental Refugee" contracting party framework and enhance the unity of this issue within the framework of international refugee law.

4.2. Determine potential host countries' accommodation principles and responsibilities for "Environmental Refugees"

Since the legal responsibilities of host countries for "Environmental Refugees" have not yet been clarified, and the criteria for determining "Environmental Refugees" are relatively vague, it is constructive to stipulate legal principles for the protection of "Environmental Refugees" under international refugee law. Regarding the different international subjects involved in "Environmental Refugees," the "non-refoulement" principle of international refugee law and the "common but differentiated responsibilities" principle of international climate change law can be combined to regulate "Environmental Refugees" by the principles of international law.

4.2.1. Combine the principle of "standardized judgment" with the principle of "non-refoulement"

The issue of "Environmental Refugees" should essentially be classified as a refugee issue. Therefore, determining "Environmental Refugee" standards and the principles of protection are the primary tasks in dividing the responsibilities between the source and host countries.

This article believes that due to the unique nature of "Environmental Refugees" in terms of refugee status, the protection of "Environmental Refugees" should follow the combination of the "standardized determination principle" and the "non-refoulement principle."

First, establishing standardized determination principles will help the host country identify "Environmental Refugees" and balance the obligations of the host country and the country of origin. This principle arises from the two significant aspects of the current "Environmental Refugees" - the practical troubles of the source countries of "Environmental Refugees" and the identification dilemma of the host countries. The host country reserves the right to determine whether "Environmental Refugees" are eligible to accept refugees; the source country faces the dual crisis of the disappearance of national territory and the continuous relocation of its population. The way to adjust the relationship between the two is to formulate standardized determination principles. Specifically, it convenes international refugee organizations such as the International Refugee Agency to participate in the identification process. It invites "third-party" international organizations or neutral countries to formulate "Environmental Refugees." The standardized determination principles of "refugees" objectively assess the actual situation of the countries where "Environmental Refugees" come from and publish them in research reports in the form of environmental quantitative indicators as the basis for acceptance by each host country.

Secondly, the principle of "non-refoulement" should also apply to protecting "Environmental Refugees." The principle of "non-refoulement" is reflected in Article 33 of the Refugee Convention, which states that "Contracting States prohibit the deportation of refugees for various reasons." It is a core principle of refugee protection and should, therefore, also apply to the issue of accepting "Environmental Refugees." Applying the principle of "non-refoulement" to the "Environmental Refugees" issue has two benefits: first, it promotes the theoretical development of refugee definitions in the international refugee law system; second, it alleviates the practical problems encountered by "Environmental Refugees." As the foundation of the international refugee law system, the principle of "non-refoulement" is the basic principle for fully safeguarding the human rights of refugees. Therefore, whether they are political "traditional refugees" or the "Environmental Refugees" discussed in this article, they all have fundamental human rights that should be protected. The right to immediate repatriation to the country of origin should apply to those not granted asylum.

In short, the combination of the "standardized determination principle" and the "non-refoulement principle" is conducive to determining the core accommodation principles of "Environmental Refugees." It avoids any responsibilities of the relevant host countries in responding to their asylum applications, clarifies the situation, and promotes the compatibility of the protection of "Environmental Refugees" with international refugee law.

4.2.2. Fulfill "common but differentiated containment" responsibilities

The problem of "Environmental Refugees" involves many subjects, and the relationship is relatively complex. However, the reasons for their forced movement are relatively single, mainly climate change and environmental degradation. Therefore, this article recommends drawing on the principles of international consensus in the Paris Agreement on global climate change and dividing the responsibilities of different stakeholders with common but differentiated responsibilities [27].

First, international refugee law should clarify that protecting "Environmental Refugees" is a shared global responsibility. The objective reason for the emergence of "Environmental Refugees" is that some island countries and low-lying coastal areas have objective disadvantages in the geographical environment, and the permanent environmental deterioration caused by global climate warming has accelerated the formation of "Environmental Refugees." The Paris Agreement has stated that global climate warming is a

global issue for all countries. Therefore, as an international refugee problem derived from global climate change, the responsibility for protecting "Environmental Refugees" should, in principle, belong to the whole world. Countries are jointly shouldering responsibilities as they deal with global climate change.

Second, "differentiated responsibilities" are crucial to hosting responsibilities and one of the best ways to establish justice in hosting "climate refugees." On the one hand, the countries where "Environmental Refugees" come from should actively seek international cooperation and relief, build strategic artificial islands, strengthen coastal baselines, apply for long-term loans from international organizations and the World Bank, or carry out planned regional migration; on the other hand, mainland countries or more economically developed countries that are close to the country of origin of "Environmental Refugees" or in the same natural geographical area should assume more independent responsibilities for protecting "Environmental Refugees." This article believes that due to geographical factors and environmental and climate factors, countries adjacent to submerged islands are more likely to become host countries for "Environmental Refugees" to apply for asylum and "climate permanent visas." Neighboring countries that can accommodate "Environmental Refugees" have relatively low difficulty and cost in assisting the source countries of "Environmental Refugees."

The operation difficulty is also relatively easy. After summarizing the island countries currently threatened by rising sea levels, it can be found that most countries, such as Kiribati, Tuvalu, and Nauru, are located in the central Pacific region adjacent to the northeastern part of Oceania. Correspondingly, Australia and New Zealand are also located in Oceania, which has become the first choice for these Pacific island countries to apply for refugee asylum and immigration. Therefore, mainland countries close to the countries of origin of "Environmental Refugees" should bear more protection responsibilities.

4.3. Establish relief and appeal channels under the framework of international refugee law

Given the lack of adequate relief and special appeal channels for "Environmental Refugees" under the international legal system, this article believes that a particular relief plan and special appeal channels for "Environmental Refugees" should be established under the international refugee law system.

Adding a particular relief plan for "Environmental Refugees" is feasible under the international refugee framework. There is a precedent for extraordinary relief in international refugee relief. In order to assist the Palestinian people, the United Nations General Assembly established the Near East Palestine Refugee Relief and Works Agency (UNRWA), which constitutes an essential international relief project under the international refugee framework. Correspondingly, in response to the increasingly severe problem of "Environmental Refugees," we may wish to refer to the operating mechanism of UNRWA and coordinate the UNHCR and humanitarian aid agencies. On the one hand, we can provide necessary humanitarian assistance to "Environmental Refugees" who have suffered serious harm to their survival. On the other hand, we should provide engineering assistance to the local ecological environment in the countries where "Environmental Refugees" come from to slow down environmental deterioration.

Furthermore, establishing a complaint channel for "Environmental Refugees" under the framework of international refugee law is conducive to dynamically resolving transnational visa disputes and nationality issues for "Environmental Refugees." In addition to the appeal channel of the UNHCR, "Environmental Refugee" groups can complain to potential host countries under the framework of international refugee law and reasonably express their requests for visa extensions; specialized agencies that deal with "Environmental Refugee" issues can later, combined with the comprehensive opinions of the International Refugee

Agency and the Human Rights Committee, objectively determine whether the complainant has the identity characteristics and constituent elements of an "Environmental Refugee," provide opinions and suggestions for the parties and the host country, and protect the legitimate rights and interests to the greatest extent.

To sum up, the "Environmental Refugees" issue should be discussed in the context of international refugee law. However, establishing unique projects and institutions under the framework of international refugee law requires work. It requires implementing the first two aspects of this chapter and the international community.

5. Summary

The plight of "Environmental Refugees," a consequence of global warming and irreversible environmental degradation, has become a pressing concern for the international community. However, the lack of consensus in academic circles on the definition and identification of "Environmental Refugees" has led to the emergence of this term. The current international refugee law system is fraught with theoretical and practical dilemmas, including the absence of legal principles, contradictory expressions, unclear host country responsibilities, and a need for more legal remedies and appeal channels.

Regarding the debate over the definition of "Environmental Refugees," after objectively analyzing the causes and constituent elements, it can be defined as "the permanent deterioration of the living environment that has caused huge consequences to the survival and life rights of Indigenous peoples" individuals or groups who are threatened and thus forced to seek permanent relocation in a transnational form.

Regarding the protection of "Environmental Refugees" under international law, the absence of "Environmental Refugees" in international refugee law reflects the dispute over the suitability of "Environmental Refugees" who are subject to traditional international refugee law under the framework of international refugee law. The expression of "Environmental Refugees" in international treaties reflects certain contradictions and does not involve the core and essence of "Environmental Refugees." In addition, the legal responsibilities of host countries for "Environmental Refugees" have not yet been clarified. The macro scope of responsibilities and the blurring of the size of responsibilities have hindered "Environmental Refugees" from accepting protection in the form of international refugees. Some cases of "Environmental Refugees" also show that there is currently a lack of adequate legal remedies and appeal channels for "Environmental Refugees" under the framework of international refugee law.

Finally, given the three practical dilemmas of "Environmental Refugees," a reasonable path to gradually solve them should be explored based on international refugee law. First, seek regional cooperation channels. In particular, the Pacific Islands region can gradually expand the definition of refugees. Secondly, in terms of standardized expressions in international treaties, the inevitable connection between "environment and climate" factors and "Environmental Refugees" should be clearly stated, and a global conference of parties should be convened to promote the final formation of the "Environmental Refugee" contracting party framework. In addition, the principle of standardized determination should be combined with the principle of "non-refoulement" to fulfill "common but differentiated accommodation responsibilities" and establish core principles for dealing with the issue of "Environmental Refugees." Coordinating UNHCR and humanitarian aid agencies to build relief projects to deal with "Environmental Refugee" issues within the international refugee law framework and expand complaint channels is also constructive.

References

- [1] Forster, Piers M., et al. "Indicators of Global Climate Change 2022: annual update of large-scale indicators of the state of the climate system and human influence." *Earth System Science Data* 15.6 (2023): 2295-2327.
- [2] Lee, Hoesung, et al. "IPCC, 2023: Climate Change 2023: Synthesis Report, Summary for Policymakers. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland." (2023): 1-34.
- [3] Yong, Chen. "Some Perspectives on Several Basic Issues in Studies of Environmental Migration." *China Population, Resources and Environment* (2009): n. pag.
- [4] Yan, Bo. "Reflection on Environmentally-forced Migration." *International Forum* (2006).
- [5] Brown, Lester R. "Twenty-Two Dimensions of the Population Problem. *Worldwatch Paper 5*." (1976).
- [6] McGregor, JoAnn. "Climate change and involuntary migration: implications for food security." *Food policy* 19.2 (1994): 120-132.
- [7] Goodwin-Gill, Guy S., and Jane McAdam. "UNHCR and climate change, disasters and displacement." The United Nations Refugee Agency (UNHCR), Geneva, Switzerland (2017).
- [8] Docherty, Bonnie, and Tyler Giannini. "Confronting a rising tide: a proposal for a convention on climate change refugees." *Harv. Envtl. L. Rev.* 33 (2009): 349.
- [9] Martin, Susan. "The state of the evidence." *Forced Migration Review* 49 (2015).
- [10] Morrissey, James. "Rethinking the 'debate on Environmental Refugees': from 'maximilists and minimalists' to 'proponents and critics'." *Journal of Political Ecology* 19.1 (2012): 36-49.
- [11] El-Hinnawi, Essam. "Environmental Refugees." (1985): 41-41.
- [12] Wennersten, John R., and Denise Robbins, eds. "Rising tides: Climate refugees in the twenty-first century." Indiana University Press, 2017.
- [13] Weiss, Kenneth R. "The making of a climate refugee." *Foreign Policy* 28 (2015).
- [14] Stojanovic, Bojan. "The view of the Human Rights Committee in the case of *Ioane Teitiota v. New Zealand*, and its relevance for international law." *Collection Papers Fac. L. Nis* 87 (2020): 73.
- [15] Zimmermann, Andreas, Jonas Dörschner, and Felix Machts, eds. "The 1951 Convention relating to the status of refugees and its 1967 protocol: A commentary." Oxford University Press, USA, 2011.
- [16] Neuteleers, Stijn. "Environmental Refugees: a misleading notion for a genuine problem." *Ethical Perspectives* 18.2 (2011): 229-248.
- [17] Sciacaluga, Giovanni, and Giovanni Sciacaluga. "The Role of the UNFCCC and of the Global Compacts for Refugees and Migration." *International Law and the Protection of "Climate Refugees"* (2020): 145-156.
- [18] Robertson, Jake. "Climate Change refugees: the extent New Zealand law Protects Migrants displaced by Climate Change." LLB (Hons) Dissertation, University of Otago (2016).
- [19] Klein Solomon, Michele, and Suzanne Sheldon. "The global compact for migration: From the sustainable development goals to a comprehensive agreement on safe, orderly and regular migration." *International Journal of Refugee Law* 30.4 (2018): 584-590.
- [20] Atapattu, Sumudu. "Climate change and displacement: protecting 'climate refugees' within a framework of justice and human rights." *Journal of Human Rights and the Environment* 11.1 (2020): 86-113.
- [21] Zhipeng, He, Shenqing Xie. "An inquiry into the international legal competence of States whose territories have been completely submerged by the sea." *Oriental Law* (2014):82-93.
- [22] Fiennes, Leandra. "New Zealand's Climate Refugee Visa, a framework for positive change." (2019).
- [23] Alogna, Ivano, Christine Bakker, and Jean-Pierre Gauci, eds. *Climate change litigation: global perspectives*. Brill, 2021.
- [24] Setzer, J., & Higham, C. (2022). *Global trends in climate change litigation: 2022 snapshot*.
- [25] Convention Governing the Specific Aspects of Refugee Problems in Africa Article 1:(2) The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign

domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

- [26] The Cartagena Declaration on Refugees and the Protection of People Fleeing Armed Conflict and Other Situations of Violence in Latin America, P32-33, Chapter V: The regional refugee definition in the Cartagena Declaration was meant to provide a concise reference point to expand protection while swiftly responding to the growing plight of refugees who did not fulfil the 1951 Convention definition. Proper interpretation of the cause of flight—namely, the prevailing situation in the country of origin and a threat to life, safety or freedom—is key to the appropriate application of the regional refugee definition.
- [27] Mingde, Cao. "The Legal Standpoint and Strategy of China to Participate in International Climate Governance: From the Perspective of Climate Justice." *China Legal Science* 2016(01):29-48.