



Shrinking climate niches: In 50 years, large parts of the world will become too hot for human habitation if global warming continues unabated.

DISPLACED BY THE CLIMATE

TEXT: CHRISTIAN JAKOB

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According to UNHCR, over 116 million people were displaced globally in 2023 – due to violence, armed conflict, and, increasingly, as a result of extreme climate events, rising sea levels, and resource conflicts such as those caused by water shortages. However, the creators of the 1951 Geneva Refugee Convention did not consider climate impacts as a reason for leaving one’s homeland. International law and migration research now explores how climate change-induced migration could be managed.

Kausea Natano gave Anthony Albanese a shell necklace to hang over his Hawaiian shirt, but Australia's Prime Minister had brought Natano something far more valuable. In November 2023, Albanese visited the President of the Pacific island state of Tuvalu. In a tropical garden, shaded by palm trees, the two leaders signed a treaty granting the 11,000 residents of Tuvalu the right to relocate to Australia if climate change renders the islands uninhabitable. They “deserve the choice to live, study, and work elsewhere as climate change impacts worsen,” said Albanese.

The Australian offer, made at Tuvalu's request, did not stem from any legal claims by the people of Tuvalu or because they “deserved” it. Australia made this concession by choice. But what about the millions who will be displaced by climate change in future?

34 “Climate change could become the biggest driver of displacement,” said António Guterres, then UN High Commissioner for Refugees, at the 2009 World Climate Summit in Copenhagen. According to the UN, floods, storms, droughts, and wildfires displaced around 22 million people in 2019, and as many as 32 million in 2023. Last year, a study led by Timothy Lenton from the University of Exeter revealed the consequences of the shrinking “temperature niche” – the regions where average annual temperatures allow for human settlement. This range extends from about -5 to +35 degrees Celsius, with the optimal range being 11 to 15 degrees Celsius. Areas outside this niche, particularly those with a combination of high temperatures and high humidity, are considered potentially life-threatening. With a global temperature increase of 2.7 degrees Celsius, regions currently inhabited by about one-third of the world's population would fall outside this habitable niche by the end of the century. This would affect people in India, Nigeria, Indonesia, Pakistan, and the Philippines, as well as large areas of countries such as Burkina Faso, Mali, and Qatar.

However, climate-induced displacement is difficult to distinguish from other dynamics of flight and migration. “There are many reasons behind displacement

and flight; there is no one single factor,” says Steven Vertovec, a social anthropologist and founding Director of the Max Planck Institute for the Study of Religious and Ethnic Diversity in Göttingen: “Reason A, consequence B – that's overly simple, linear thinking.” It is difficult to establish rigid criteria, he explains, such as those that apply to political refugees. With climate change, the direct climate impacts are

mixed with phenomena such as food insecurity or violence. Even naming them is not easy; “survival migration” is one suggestion. “But here, too, it depends on the nuances – forms of mobility that do not pose an acute threat to life would not be included.” Nor is Vertovec satisfied with the much-used term “displacement”: “This often overlooks people's autonomy in their own actions and decision-making in relation to their migration.”

Vertovec is equally skeptical about the sometimes wildly divergent forecasts. “They are often nonsense,” he says. “Some claim there will be more than a billion climate migrants, while others simply take the entire Sahel region and say that these are potential climate refugees. The figures you get from this are crazy.” International organizations are expected to make preparations on the basis of forecasts. Yet many of these forecasts, he says, are used “less for preparation and more for the shock factor.”

It is clear that climate change will increasingly become a factor that forces people to leave their homes. For many, it may even become the primary driver of migration. These people need prospects: is their only hope that someone will voluntarily take them in – as with the people of Tuvalu? Or do they have legal claims?

SUMMARY

It is difficult to attribute migration unequivocally to climate change – multiple factors influence mobility. For this reason, it is also hard to forecast how many people are likely to leave their homes primarily as the result of climate change in the future. However, these numbers will increase.

Current international law governing refugees does not recognize a right to protection for those affected by climate change, and it is difficult to establish such a new right. It is conceivable that the principle of non-refoulement enshrined in international, EU, and national law also applies to climate migrants, but this has not yet been sufficiently clarified by the courts.

It may be possible for victims of climate change to derive legal claims against its main perpetrators on the basis of existing law, but the possibilities for legal enforcement are weak.

Binding commitments are needed to help with adaptation to climate change – most significantly in the major cities of the Global South, which are likely to be the major centers of climate migration.

The right to protection and admission is enshrined in the 1951 Geneva Refugee Convention (Refugee Convention). The Refugee Convention recognizes five grounds for flight, namely well-founded fear of persecution by reason of race, religion, nationality, membership of a particular social group, or political opinion. “Climate refugees” are therefore not included. The lawyer Laura Kraft conducts research at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg. She says that, given the cur-

rent political climate, it would be risky to add “climate change-induced displacement” to the Refugee Convention. “This would open Pandora’s box, because existing protection standards could be renegotiated.”

Enshrining protection rights for climate migrants in an additional protocol would be less risky. “An additional protocol cannot limit existing treaty protection,” says Kraft. However, it would only be binding for the signatory states, and currently few governments are likely to enter into such a voluntary commitment.

“Human rights are a building block of climate justice.”

ANNE PETERS

But does the existing law already potentially establish a right to protection for climate refugees? The first person to seriously attempt to clarify this question is Ioane Teitiota, a citizen of the island state of Kiribati. He moved to New Zealand in 2007 and worked there as a cabbage

picker. When his work visa expired in 2010, he applied for asylum as Kiribati was at risk of being flooded. He invoked the Refugee Convention and the non-refoulement principle. This principle prohibits deportations if, for example, the right to life guaranteed in the UN International Covenant on Civil and Political Rights is in danger. The Covenant has been signed by 196 states, including New Zealand. New Zealand nevertheless rejected Teitiota’s application: New Zealand claimed that neither of the standards was applicable, and his life was not in immediate danger.

Teitiota, along with his family, was deported to Kiribati in 2015 and appealed to the UN Human Rights Committee. The Committee rejected the complaint in 2020, stating that Teitiota’s life was not under threat in Kiribati at the time of his deportation. However, the Committee found for the first time that deportations can violate the Covenant if those affected are exposed to conditions caused by climate change that jeopardize their right to life. It was a “historic case” for the UN Committee that allowed for asylum applications based on climate change – this is how the Committee assessed its own decision in January 2020. Nevertheless, the number of “climate change-induced displaced persons” will reach such proportions in the future that potential host states are unlikely to follow this interpretation of the Covenant in the long term.

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Sinking islands: In 100 years, Pacific island states like Tuvalu will be completely flooded, warn climate researchers – these states are fighting for their very existence.



PHOTO: PICTURE ALLIANCE / GLOBAL WARMING IMAGES | ASHLEY COOPER



PHOTO: DAVID AUSSERHOFER / MPG

Panel at the Max Planck Society Berlin: Filippo Grandi, UN High Commissioner for Refugees (second from left) and Marcus Hicken from the Federal Foreign Office (second from right) discuss legal and economic aspects of climate migration with Max Planck Directors Anne Peters (middle) and Axel Ockenfels (right). Moderation: Helene Bubrowski.

The non-refoulement principle is also enshrined in the European Convention on Human Rights (ECHR). “Deportation to areas affected by droughts, heat waves, or floods caused by climate change could be considered inhuman or degrading treatment and thus give rise to a right to protection under EU law or national law in conjunction with Article 3 ECHR,” says Laura Kraft.

However, neither the European Court of Human Rights (ECtHR), which interprets the ECHR, nor the European Court of Justice (ECJ), which interprets EU law, have yet made any decisions on this issue. In some expulsion cases, the ECJ has ruled that a generally poor humanitarian situation is not sufficient for a protection claim. Under EU secondary legislation, an actor must actively or at least culpably cause the “inhuman or degrading treatment” – for example, if a militia destroys hospitals and thus prevents access to healthcare.

Kraft considers it likely that the ECJ will also adhere to this actor requirement in the event of a lawsuit by a climate migrant. It also remains to be clarified whether industrialized countries, which have emitted particu-

larly large amounts of greenhouse gases, could be understood as such actors – creating an obligation to accept migrants. The ECtHR does not necessarily require an actor within the framework of Article 3 of the ECHR – and neither do German administrative courts when they refer to the case law of the ECtHR in expulsion cases. Rather, they assess the general humanitarian situation in a country of origin, for example, on the basis of country reports by the Federal Foreign Office. The crucial point, according to Laura Kraft, is that the individual situation of a person must be so severe that returning them to their country of origin would be considered “inhuman.”

Are certain climatic-ecological conditions sufficient to merit this? And at what threshold exactly? For example, how significantly must crop yields decline due to global warming for a person not to be considered merely a poor farmer and economic migrant leaving an already barren region in search of a better income? What individual factors must be added to establish the necessary individual vulnerability and need for protection?

“Courts will provide answers to these questions in specific cases through the interpretation of the law and its application in individual circumstances,” says Kraft. However, the non-refoulement principle derived from human rights only protects against deportation. It does not establish a right to enter a country. Without a visa, however, entry for people from the Global South is only possible by irregular means, which are often expensive and very dangerous.

The 1969 African Refugee Convention, adopted by the Organization of African Unity (OAU), is one example of an attempt to establish a broader definition of refugees. It extends protection to individuals whose countries are experiencing events that are “seriously disturbing public order.” In 2011, Kenya and Ethiopia admitted people from Somalia on this basis, where drought, hunger, insecurity, and armed conflict prevailed. However, other African states have previously refused to classify environmental events as a “serious disturbance of public order” within the meaning of the Convention. The UN Refugee Agency (UNHCR) has a mandate to officially determine a person’s refugee status. This mandate includes a definition beyond that of the Refugee Convention, similar to the OAU’s, and could apply, for example, if persistent crop failures significantly disrupt public order. Nevertheless, individuals recognized by UNHCR may live in its refugee camps, but do not have the right to resettlement in a third country.

International law expert Anne Peters, Director at the Max Planck Institute for Comparative Public Law and International Law, does not believe that new international legal norms are needed in response to climate mobility. “We already have legal starting points for reaching fair and equitable outcomes,” she says. International human rights, in particular, are an important legal tool, says Peters. They can directly be applied by regional and domestic courts, and this is one of the reasons why many climate lawsuits invoke human rights, she explains. Such lawsuits also demand government measures to reduce greenhouse gas emissions. “However, human rights seek to protect individuals, and are not per se an instrument to remedy systemic problems,” Peters says.

The UN Global Compact for Migration adopted in 2018 is also relevant. The Compact contains a section on “natural disasters and the adverse impacts of climate change,” in which the signatory states promise support for adaptation and resilience measures in countries adversely affected by climate change, guarantee access to humanitarian aid, and announce cooperation in the design of resettlement measures and visa policies. “This section is an important point of reference in the discussion about climate mobility,” says Peters – but the Compact for Mi-


gration is not a formal treaty of international law; rather, it is soft law. International law-making is mostly cautious because international organizations are dependent on acceptance and financing from the member states. “And often the organizations and international courts do not want to jeopardize this acceptance,” says Peters. If international law becomes too ambitious, states will refuse to cooperate.

Therefore, voluntary cooperation is prevalent. One example of such voluntary cooperation is the “Platform on Disaster Displacement”, an association of 15 countries founded in 2012 to help climate migrants. The Expert Council on Integration and Migration, which was set up by the Bundestag and funded by the German Federal Ministry of the Interior, pointed out in its 2023 annual report that the “immediately necessary” responses to increasing climate migration are “most likely to come from national governments.” The panel therefore suggested three new instruments, such as a “climate passport” as a humanitarian permanent residence permit for those severely affected, or a temporary “climate card” for those less at risk. Finally, the “climate work visa” would help people from less affected countries to gain access to the German employment market.

People need a right to stay in their homeland

Psychologist Birgit Leyendecker from the University of Bochum is Vice Chairwoman of the Expert Council. She believes that in addition to instruments for the admission of climate refugees, their “right to stay” in their regions of origin must be supported. “This emotional aspect is often underestimated,” she says. Even for the people in the Ahr Valley, it was very difficult to learn that they could not rebuild their homes in the same place. “Attachment to one’s homeland is often very strong,” says Leyendecker. “The ‘right to leave’ should therefore only be a last resort.” For Leyendecker, this means that industrialized countries must invest more in adaptation mechanisms in regions particularly affected by climate change.

Steven Vertovec agrees. “It’s clear that many people will head to the outskirts of major cities in their own regions first.” These have to be able to prepare for the growing demands, he says. “It’s all a problem of planning, first and foremost: how do people in the outskirts of the big cities get access to water and sanitation? How can food supplies be ensured?” According to Vertovec, extending international protection to include the expansion of such infrastructure is one of the most important tasks.

 www.mpg.de/podcasts/recht-schafft-freiheit (in German)