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**ENVIRONMENTAL MIGRANTS AND THE 1951 REFUGEE  
CONVENTION**

Master's thesis

INTERNATIONAL RELATIONS AND EUROPEAN-ASIAN STUDIES

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I hereby declare that I have compiled the paper independently and all works, important standpoints and data by other authors has been properly referenced and the same paper has not been previously presented for grading.

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## **ABSTRACT**

It is likely that extreme weather events will happen more frequently and will be more severe and the slow effects of climate change will affect the lives of a growing number of people. States lack of adaptation strategies for climate change impacts will likely push people to migrate across borders in search of better living conditions. These climate-induced international migrants, who are forced to migrate because of environmental reasons, need protection and support from the international community. However, to this point, there is no protective legal framework for environmentally displaced people. There are only a few groups of people, who are accepted as refugees and that are protected under international law: stateless people, those who are eligible for human rights law and refugees.

This paper concentrated on the latter and analysed if the 1951 Refugee Convention could offer protection for those, who are displaced because of climate change effects. This is examined with Ioane Teitiota's case, who applied for asylum in New Zealand under the 1951 Refugee Convention as a 'climate change refugee'. In Ioane Teitiota case the Supreme Court of New Zealand determined that Ioane Teitiota was unable to bring himself within the terms of the Convention and therefore was not provided protection. This paper considers why the 1951 Refugee Convention is not able to offer protection for environmentally displaced persons and concludes that the 1951 Refugee Convention is able to protect environmentally displaced persons only if the criteria of the definition of a refugee is filled. If the reason for migration is solely environmental, then the Refugee Convention is not able to offer protection.

Keywords: environmentally displaced people, 1951 Refugee Convention, refugees, climate change

## INTRODUCTION

*“Natural disasters occur more frequently and are of greater magnitude and devastating impact. Almost every model of the long-term effects of climate change predicts a continued expansion of desertification, to the point of destroying livelihood prospects in many parts of the globe. And for each centimetre the sea level rises, there will be one million more displaced. The international community seems no more adept at dealing with these causes than it is at preventing conflict and persecution”* (UNHCR 2011, 7) stated by the High Commissioner, Antonio Guterres at The Office of the United Nations High Commissioner for Refugees (hereafter referred to as UNHCR) Executive Committee meeting in 2007.

Climate change is one of the biggest global problems the International Community is facing in contemporary times as climate change affects all the regions in the world. However, developing states who lack knowledge and resources initiating adaptive strategies are unable to cope with climate change effects effectively and therefore are feeling the effects of climate change the strongest (IPCC 2014, 4). People in those countries are especially vulnerable, and they have a more significant possibility to become displaced. Most of the displaced people will be migrating within their state borders as the climate change effects may have a severe impact only on some parts of the country and people tend to stay close to their home (Christian Aid 2007, 7). However, different studies are outlining that when states are not able to adapt, then the climate-induced migration will also be cross-borders (IPCC 2014, 16).

The issue of climate change is widely discussed within the International Community; however, it does not often include the discussion of climate change induced population movement. Nevertheless, the discussion on migration as a result of climate change impacts has been prominent among scholars and academics. The environmental studies researchers have brought out the issue of environmentally displaced persons (hereafter referred to as EDP) to receive more

interest in the matter of climate change, and the researchers of migration studies have concentrated on the mixed nature of migration (Suhrke 1993; Richmond 1994). Even though there has been an global discussion about EDP's by different fields of study, in Estonia, there is not much research done on this issue (*See Appendix I*).

The role of international law in international relations is prominent. The states are bind by the rules set in the international law, and therefore the international law shapes the relationships states have with each other (Slomanson 2011, 4-5). International laws are both to restrain the states to behave in the international sphere within the standards set by the international community, but also legitimises states sovereignty in their domestic affairs (Bentham 2017, 3). Even though all the states do not always follow international law and obedience to international law varies across countries, international obligations are framing the global interactions between state actors (Slomanson 2011, 4).

The problem of EDP's is multifaceted and is related to several areas of international governance, such as migration and asylum, development, human rights protection, environmental issues and offering humanitarian aid and assistance for the people in need. All those issues are covered by states themselves and the international community by different organisations and regimes, while the protection of movement of people is safeguarded by UNHCR (UNHCR 2011, 7). However, to this point, there is no protective legal framework for EDP's. There are only a few groups of people, who are accepted as refugees and that are protected under international law: refugees, stateless people and those who are eligible for human rights law. This paper is concentrating only on the first group, these people who can be defined as 'refugees' according to the 'Refugee Convention' (UNHCR 2010, 46). The global legal framework for international refugee protection is based on the 1951 Convention and its 1967 Protocol relating to the Status of Refugees (hereafter referred to as 'Refugee Convention'). UNHCR has a mandate for protecting refugees by its Statute, which was adopted by the General Assembly in December 1950 (UNHCR 2017, 24). Even though UNHCR has included more beneficiaries than those defined in the 'Refugee Convention' with resolutions of the General Assembly and directives of the Executive Committee and the 'Refugee Convention' is complemented by regional refugee instruments, the international protection framework for refugees is still based on the 'Refugee

Convention', which shapes the relations between state actors in international sphere (UNHCR 2017, 24). This paper is analysing if the 'Refugee Convention' is able to offer protection for people migrating across borders and fleeing environmental harm. It is hypothesised that the 'Refugee Convention' can be applied for the protection of EDP's. The answer to the hypothesis will be reached through exploring the following research question: "Is the 'Refugee Convention' able to offer international protection for EDP's?".

This paper will firstly explain used research methods and data. Then it will give an overview of 'Refugee Convention' outlining the historical background of the convention, and its creation process and will look into the definition of the concept of 'refugees'. Followingly, it will examine the contemporary migration phenomenon concentrating firstly on the most relevant theories of migration for the environmentally induced migration phenomenon and then explore different types of the contemporary movement of people. Then it will look in the data of migration flows from various organisations and international agencies bringing out the most critical flows of migration in the contemporary world. Subsequently, it will discuss defining those displaced by climate change and if those people could be defined as 'refugees'. Followingly, the case law of Kiribati's citizen asking for asylum under the 'Refugee Convention' in New Zealand will be analysed, outlining the reasons why Ioane Teitiota didn't get international protection as a 'climate change refugee'. As follows, the discussion, where it will be deliberated if the 'Refugee Convention' can offer protection for EDP's, brings out possible grounds for protection under 'Refugee Convention' and offers a solution for protecting EDP's. Finally, the conclusion will provide an overview of this paper and give future perspectives on this issue.

## **METHODOLOGY**

The information used in this paper was collected mainly by secondary data collection method. This paper is based on a meta-analysis of existing data on different research subjects, such as 'climate change', 'migration' and 'Refugee Convention'. The data was collected from government statistics, published research reports from different organisations and international agencies, academic articles and studies, case laws and books related to this topic. All data gathered was re-purposed for this paper and to answer the research question: "Is the 'Refugee Convention' able to offer legal protection for environmental refugees?".

The previous researches done by students in Estonia were acquired through online catalogue ESTER. The search conducted was limited to theses and dissertations. In the search terms 'kliimapagulane', 'põgenikud', 'climate change refugee' and 'migrant' were used. There were 162 papers found, 13 passed the initial screen, and five papers were chosen for systematic literature review (*See Appendix 1 for search results*).

As Google Scholar and EBSCOhost online research services are easily accessible and are used to conduct social science research, an electronic search was enacted through them (*See Appendix 2, 3 for search results*).

The inquiries made through Google scholar and EBSCOhost were not limited by any specific times or any types of publications; however, the search conducted in EBSCOhost was limited to full-text peer-reviewed journal articles. The criteria for passing the initial screen was to contain all keywords stated followingly, either in the title or in the paper. In the search, the terms 'climate change-induced migration and Refugee Convention', 'climate change refugees', 'climate change

refugees and Kiribati', 'contemporary migration phenomenon' were used. From the publications, the most relevant papers, based on the criteria indicated previously, were chosen.

From 180 publications found through Google scholar 28 passed the initial screen and 13 were chosen for systematic literature review. The inquiries made through EBSCOhost brought out 61 publications, 14 were chosen for systematic literature review to find present evidence relevant to the research question. The research references were managed with Mendeley program. The paper's content was designated into four broader topics:

- a) The Convention Relating to the Status of Refugees and its 1967 Protocol
- b) contemporary migration phenomenon
- c) defining those displaced by climate change
- d) Kiribati and climate change induced migration.

The case laws referred to in this paper were found through The United Nations High Commissioner for Refugees site, which provides protection information to asylum decision-makers - [www.refworld.org](http://www.refworld.org). There was conducted search for case laws with the term 'climate change refugee', where 330 case laws were found. As the author of this paper is interested in Kiribati, then the search was limited to Kiribati as country of origin. Two case laws were found, one country of asylum as Australia and another New Zealand. The New Zealand case law is used in this paper as a case study.

The migration data was mainly gathered from government statistics, published research reports from different organisations and international agencies, such as the United Nations and The UN Refugee Agency. All the different types of literature were analysed to identify if the 'Refugee Convention' can provide legal protection for the people who are on the move because of environmental reasons.

# 1. THE CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS 1967 PROTOCOL

## 1.1. Historical background

The Universal Declaration of Human Rights 1948 article 14 stated that in the case of persecution everyone has the right to ask and have asylum in another country than their country of origin (UN 1948, 4). 'Refugee Convention' is based on that article (UNHCR 2010, 2).

'Refugee Convention', which was adopted in 1951 is the understructure of international refugee protection in the contemporary world (*Ibid.*, 2). Even though the norms of 'Refugee Convention' is not always followed by states and implemented in their national legislation the Convention has had a positive impact on the protection of refugees all around the world. The Convention is considered today part of Customary international law (hereafter referred to as CIL), which means that the standards set in the Convention are universal for all the states even when they have not signed it and therefore penetrate international relations as states seek to follow the norms set in the CIL in their state's statutes (UNHCR 2002; Posner & Goldsmith 1999, 1113).

Even though migration is not a new phenomenon, the issue of the status of the refugees came into existence with the creation of nation-state and nationality (UN Ad Hoc Committee on Refugees and Stateless Persons 1949). The political and social crises and territorial changes, what occurred in Europe after the First World War (hereafter referred to as WWI): the breakdown of Russian and Turkish empire, the rise of Fascist regime in Italy, Civil war in Spain and the rise of Nazi regime in Germany, all resulted in a significant number of migrants looking for a new and safe country while fleeing from their own (UN Ad Hoc Committee on Refugees and Stateless Persons 1949). However, without international legal protection framework for refugees in place, states had no obligation to provide legal protection for those displaced people.

The issue first rose in practise as those people fleeing persecution from their own country of origin, did not want to return as they were not protected by their state of origin (UNHCR 1997, 1). However, they were not protected also in the countries they were received as there were no rules or norms set internationally for refugee protection. However, the migration phenomenon does not follow the regulations set in place, but practical needs- people chose to flee from their country as otherwise they would have been persecuted. It was not a question of rights, but a question of life. This rise of the number of refugees of that time brought many practical questions, what needed to be addressed, such as how to identify such people and how to give them the protection and rights they need (*Ibid.*, 2). Because of the development of the international community and the wish and means to work for a common goal after the horrific events of WWI endorsed states to cooperate. The international community priority relating to migration at that time was to deal with the issue of identity papers and travel documents in order to give these people the possibility to move across borders. Therefore the first international arrangements concerning refugees at that time were made to deal with the issue of certificates of identity for Russian refugees in July 5, 1922, Armenian refugees in May 31, 1924, both accepted by 30 states and consolidated arrangement, which included both national groups in May 12, 1926 accepted by 20 states (League of Nations 1922; UN Ad Hoc Committee on Refugees and Stateless Persons 1950b; UNHCR 1997, 2). The following international instrument, which addressed both of these groups legal status was signed in Geneva on June 30, 1928, and another agreement expanding the scope also to Assyrians, Assyro-Chaldeans, Turks were signed only by ten states (UN Ad Hoc Committee on Refugees and Stateless Persons 1950b; UNHCR 1997, 2). Even though there could be found several reasons for such a small interest for signing those documents. For example, the agreements were concentrating only on specific groups of people in Europe, which whom some states did not have any contact or that many states were young states, who started to learn how to act in the International Community. However, one of the reason can be that the states did not want to take any obligation to help those people in need. As the agreement was drafted as a document of resolutions, which gave recommendations to states to protect Russian and Armenian refugees and gave them an obligation to adopt measures if they accept the document (UNHCR 1997, 2). The small interest for signing such documents is also seen with the following Convention signed at Geneva in 1932, which also included other groups

of refugees and made the number of people having a legal base for international protection even more significant, which was signed only by 8 states (*Ibid.*, 2).

As a result of the creation of the Nazi regime in Germany in 1933 and the occupation of the Saar, Austria, Sudetenland and the Protectorate resulted in a new wave of refugees who were fleeing the totalitarian regime (UN Ad Hoc Committee on Refugees and Stateless Persons 1949). To address this issue on July 30, 1935 a plan for the issuance of certificates of identity for refugees from the Saar was signed by 16 states and on 4th of July in 1936 arrangement dealing with identity papers and the status of the German refugees was signed by 7 states (UN Ad Hoc Committee on Refugees and Stateless Persons 1949; UNHCR 1997, 2). On September 14, 1939, to the Convention Concerning the Status of Refugees coming from Germany, signed by three states on February 10, was added a protocol to include refugees from Austria (UN Ad Hoc Committee on Refugees and Stateless Persons 1949). Even though this Convention and the previous agreements were important for protecting the refugee groups protected by different agreements, they did not have a far-reaching impact as the number of states agreeing with the documents was minimal and therefore there were not many states standing by them. However, considering that the development of international community based on democratic ideals and the action-based quest for change for better, was just in its start then the number of states involved in the agreements could be seen as a part of the progress of building a stronger international community.

With the WWII and by its end the number of refugees from different refugee groups was even higher than before, and the issue needed international community attention. Even though, already in 1938 Intergovernmental Committee on Refugees (ICR) was created, only in 1946 an international agreement, The London Agreement, addressing the question of issuance of travel documents to refugees was formed for certain nationalities, such as refugees from Germany and Austria and Spain and some smaller groups of refugees (UNHCR 1997, 3). ICR was succeeded by UN specialized agency International Refugee Organization (IRO), which took over all activities of ICR and also regulated the status of the new categories of refugees in their Constitution (*Ibid.*, 3). IRO work in most of the countries was really limited, however for Luxembourg, Italy, Belgium and France there were made arrangements to provide refugees

identification documents and permits, that they could work in their new country of residence, Germany and Austria were the only countries where occupying powers established a special status for Refugees (*Ibid.*, 3). In other words, the scope of the work of IRO was limited. The international agreements were concentrating only to certain national groups and with few states agreeing to follow these agreements, made them insufficient to address the refugee situation after World War II (hereafter referred to as WWII).

The new refugee situation after the WWII and the fact the status of these new groups of refugees were not regulated by international agreements and that there was a need to include refugee issue in the development of international law under the United Nations, led to series of resolutions (*Ibid.*, 3). In 1948, March 2 Human Rights Commission Resolution 116 (VI) was adopted in the sixth session of the Economic and Social Council, which requested the Secretary-General of the United Nations to look into the question of protecting stateless persons in that time and to make suggestions to UN to address this issue (UN 1947, 19; UN Ad Hoc Committee on Refugees and Stateless Persons 1950a). The results of the study and understanding that this issue needs to be addressed led to a adoption of a Resolution 248 (IX) by The Economic and Social Council, which appointed 13 states representatives to an Ad Hoc Committee to work on that time refugee issue in Europe (UN Ad Hoc Committee on Refugees and Stateless Persons 1950a). This Ad Hoc committee prepared a draft of the Convention to address the issue of the international status of refugees and stateless persons, and in 1950, on February 16 they finished the draft, and after the Economic and Social Council decision they revised the draft after Governments had given their comments (UNHCR 1997, 4). In the same year, August 14 the Ad Hoc Committee revised the draft and planned to submit it to the General Assembly at its fifth session (*Ibid.*, 4). However, instead of discussing the draft at General Assembly fifth session, the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons was summoned in Geneva for this issue. This gave the possibility for non-members of the UN to join the discussion on the drafting of a new convention. However, General Assembly endorsed the draft made by Ad Hoc Committee and the definition of the term 'refugee' and the adoption of the Statute of UNHCR to be considered to include in the 'Refugee Convention' (*Ibid.*, 5).

In Geneva, in July 1951 the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons was held, where 26 states were represented and 24 states, it means all the states with voting rights, voted for adoption of Convention Relating to the Status of Refugees (UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons 1951). The Convention Relating to the Status of Refugees was drafted to protect those people, who are persecuted by their state. To date, the Convention Relating to the Status of Refugees has been signed on behalf of 145 states (UNHCR 2015, 1). However, The Convention Relating to the Status of Refugees was limited to events, what occurred before January 1, 1951, and in Europe, even though people fleeing from their own country didn't stop with WWII and the migration wave after that, and therefore it was seen that the scope of The Convention Relating to the Status of Refugees should be broadened. In 1967 a protocol, signed by 146 states, to The Convention Relating to the Status of Refugees was added, which removed the time limit from The Convention Relating to the Status of Refugees and gave it a universal meaning (*Ibid.*, 1). The 1967 protocol is the only amendment made to The Convention Relating to the Status of Refugees. The amendment was made to develop the 'Refugee Convention' in accordance with practical issues the international community was facing at that time - the new refugee situation in the world.

In other words, the 'Refugee Convention' was developed in accordance with the practical issues the international community was facing at that time and needed to offer a solution. However, the 'Refugee Convention' has been amended only once, by the 1967 protocol and it is questionable that the 'Refugee Convention' is able to offer protection for the refugee situation the world is facing now.

## **1.2. Who are refugees?**

To protect refugees and give them rights the term refugee needs to be framed, in order to have the understanding, who are protected with 'Refugee Convention' and if it could be used to provide international protection to EDP's. The definition of a 'refugee' was proposed by the General Assembly, which divided refugees into two groups of persons: "statutory" refugees and persons who are not protected by their country of nationality as a result of events of the WWII (*Ibid.*, 10).

The first group of refugees were those people, who were protected already by previous international agreements mentioned in this paper under the Constitution of the IRO. The second category includes people who are not protected by their former country of residence as a result of the events of WWII. The second group is divided into two sub-groups, one possessing a nationality and the other is stateless persons. However, both groups of people have to be outside their country of origin, and the displacement had to occur as a result of events, what happened before January 1, 1951, in Europe. The 1967 Protocol removed both of these limits as the issue of displacement was seen all around the world. However, after the 1967 Protocol, the definition of a refugee accepted in international law has stayed unchanged. With the amendment of the 1967 Protocol the refugee is defined as follows:

*“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, is unable or, owing to such fear, is unwilling to return to it.”* (UNHCR 2010, 46)

In other words, a refugee is a person, who cannot or who is not let to return to their state of origin because of the fear of being persecuted for reasons mentioned in the definition above. Even though the 'refugee' definition territorial restriction and time limitation were removed with the 1967 Protocol, and therefore the scope of The Convention Relating to the Status of Refugees became much more extensive, it is still limited by the "well-founded fear" of "being persecuted" for different reasons, such as "race, religion, nationality, membership of a particular social group or political opinion" (*Ibid.*, 46). Nonetheless, it has its limits, 'Refugee Convention' is universal as it has been accepted by states all around the world (UNHCR 2015, 1). It is still relevant as those people defined in the 'Refugee Convention' as refugees still benefit from international protection and assistance (Jackson 1991, 407).

However, the refugees of that era are different from the refugees we have now. Contemporary world refugees are not often persecuted but are on the move because of internal strife, civil war,

foreign aggression and generalized violence or disregard of human rights (*Ibid.*, 407). Moreover, people have left their country of origin for a variety of other reasons which could be as severe as persecution, and therefore those people need international protection and assistance.

## **2. CONTEMPORARY MIGRATION PHENOMENON**

### **2.1. Theories of migration and different types of contemporary migration**

To understand contemporary migration phenomenon the development of the migration theories is explored in order to discern the causes of migration. The discussion among researchers and academics is wide, and different theories are offering an extensive area of explanations of the migration phenomenon stretching from the micro-individual to macro-structural level (Piché & Dutreuilh 2013). However, to analyse the migration phenomenon in the contemporary world, it is essential to understand, what migration is.

Alan Simmons (1987) defines migration with three major dimensions: a shift in employment, a shift in social relations and a change in residence (as cited in Piché & Dutreuilh 2013). Simmons (1987) emphasises that theories of migration are a disintegrated field of study as migration theories often cover a specific time period and certain types of migration, and therefore there is no single theory, what could cover different levels of analysis and different causes and effects of migration (as cited in Piché & Dutreuilh 2013).

Most contemporary migration theories have concentrated on the economic causes of migration, however, because of the limits of this paper the author of this paper will bring out only those theories, what are the most relevant for the discussion of the topic in question. One of the first scholars in the contemporary world to develop a theory of migration was Sjaastad (1970)- he outlined a human investment theory, which stated that the decision to migrate or not is seen from the migrant point of view as an investment. He stated that there are both macro and micro-level factors, what "pressure" individuals to migrate, but emphasised that the micro-level factors have a more significant effect on the decision of migration (*Ibid.*). This was further developed by Harris and Todaro (1970), whos model concentrated on the less developed countries, stating that individuals will migrate from rural to urban areas when the income difference is substantial.

Individuals calculate the costs and benefits before migrating and move even when the unemployment rate in the new area is high as the higher income is worth the risk.

Likely to Sjaastad and Harris and Todaro, many contemporary scholars concentrate on the economic factors influencing individuals to migrate; however, there are other more comprehensive theories, where more factors are included. Lee's push-pull theory states that there are many negative and positive factors than just economic reasons that drive people to migrate from their country of origin to another (Lee 1966, 47). There are push and pull factors, what are associated with individuals place of origin, linked to the place of destination, intervening obstacles and personal factors. The push factors are usually linked to the country of origin and are negative, such as adverse economic conditions, for example not having enough jobs, loss of wealth or having few opportunities for work. The push factors can be related to political or religious freedom, such as discriminating or reasons of persecution or war. Moreover, pushing factors can also be linked to the environment, for example, desertification, famine, drought or natural disasters. Pull factors from the country of destination are the opposite of push factors and are positive, for example, more job opportunities or better living conditions, having political and religious freedom and political stability. Furthermore, destination country often has a better socio-economic infrastructure, with proper medical care, education and security. Based on those reasons similarly to Harris and Todaro's (1970) theory individuals will make a calculated decision based on the advantages and disadvantages of migration, however more factors than just economic are included in the calculation. While some reasons may have a stronger push or pull factor for people, the positive and negative factors depend from individual to individual and the choice to migrate is, therefore, an individual calculated choice. The choice is also influenced by intervening obstacles, such as travel time and length, the mode of transportation and travel costs.

It is understandable that the pull factors will cause people to choose destination state, what is more developed and safe in order to have better or the same living standard as they had in their place of origin. However, it is not so easy to define one reason or reasons for migration as the choice of migration is done individually. For example, in the case of war, people may choose to flee that area or state because of the fear of persecution. However, they may choose to migrate because of poor living conditions the war has created. Moreover, the war may not be linked to

the migration decision at all, and it can be only economic or reasons related to family or a mixture of all those reasons. Therefore, to understand the motivation for migration, it is necessary to understand that the reasons for migration can be mixed as there are different push and pull factors each individual is considering and it is tough to determine one single reason for migrating (Richmond 1994). However, the migration flow data can help to navigate in understanding the contemporary migration phenomenon and what encourages and pressures people to migrate.

## **2.2. The new geography of migration flows**

To understand the migration flows and contemporary migration patterns the statistical data about migration should be considered. Even though there is a lot of data for migrant stocks, the data on global migration flows is limited (IOM 2018, 20). Data on flows is not gathered by all the states, and when it is gathered, it is not always comparable- different states can use different concepts, definitions and data collection methodologies. Some states offer the data from official sources, such as population registries or from the issuance of temporary or permanent residence permits, some states use sample survey data (*Ibid.*, 13-14).

States provide their collected data on migration to different organisations, for example to The Organization for Economic Co-operation and Development (hereafter referred to as OECD), to the Statistical Office of the European Union (Eurostat) or to UN Statistics Division (UN SD). Even though Eurostat data is reliable, the data is gathered only for immigration to and emigration from EU member states, which makes its scope limited (Regulation (EC) No 862/2007 2007). The OECD collects data from 45 OECD countries annually by tracking movements of people in and out of the country (UN DESA 2015, 1). Even though it gives some insight into the contemporary migration flows, the data is gathered from the state authorities and may not reflect the actual migration movements. This for several reasons, such as states getting their data from their administration while issuing, renewing or withdrawing immigration status which may differ from state to state (IOM 2017, 10). Moreover, some states are capturing data for both inflow and outflow while many states gather data just for inflow (*Ibid.*, 10). So if states do not share their data with neighbouring countries, then states have no information if the person, who entered into the country stays in the country or has emigrated. Moreover, while counting movement across

borders, it is hard to separate permanent migrants and people travelling for tourism and business (*Ibid.*, 11). Additionally, the people moving across borders irregularly are often not included in the data as this type of migration does not fit in the states regulatory norms (IOM 2011). However, acknowledging that this data is limited by the number of states providing their statistics and that the data collection may differ state by state even when the data collection methodology is the same, this paper brings out OECD data as it gives a comparable overview how many permanent entries those states in question have annually. The OECD data has been gathered from 2005 for all the OECD states and from then there it can be seen a substantial increase in the permanent migrants' inflows; however, there was a sharp fall in 2008 and 2009 as a response of the global financial crisis. After the global financial crisis, the number of migrants permanently moving to OECD countries started to increase again, and there was a 25% increase of people migrating annually from 2011 four million to 2017 five million migrates (OECD 2018, 18). The OECD data shows that the increase has been because of the increase of humanitarian migration to Europe (OECD n.d.). For example, permanent migration inflow to Germany has increased from 290,791 in 2011 to 1,051,014 in 2016, which is 261% increase (OECD n.d.). While in 2011 there were only 11,036 permanent migrants, who migrated because of humanitarian reasons, in 2016 there were 434,329, which is almost half of the total share of permanent migrant inflow to Germany in that year (*Ibid.*). One of the reasons for that could be multi-sided armed conflict in Syria, which has forced people to flee their state of origin. OECD is not only gathering information of permanent immigration inflows, but the data is categorized by the reason of migration, such as work and family accompanying the migrating workers, humanitarian protection, family reunification and free movement. For other reasons of migration, such as environmental degradation there is category 'other'; however, migration is not a single cause phenomenon and therefore this limited categorization can't give a complete overview of reasons why people choose to migrate, nevertheless it can indicate the main reason for migration within the limited reasons offered by OECD (The Government Office for Science 2011, 30).

Even though OECD may provide comparable data, it is limited in its scope as there are only 45 states gathering data on migration, the data has been gathered only from 2005 and therefore offers a limited base for showing migration trends. To understand the global geography of migration flow global data is needed. At the moment there is no significant data for migration

flows and more development is needed in the methodologies and addressing data protection concerns (IOM 2018, 14). However, the International Organization for Migration (hereafter referred to as IOM) has created the Global Migration Data Portal, where diverse data from different sources is organised on one page. United Nations Department of Economic and Social Affairs (hereafter referred to as UN DESA) is providing the portal information about global immigration stock, which is an estimated number of "the total number of international migrants present in a given country at a particular point in time" (UN DESA 2017, 9). According to the data provided by UN DESA (UN DESA n.d.), the total number of international migrants in 2017 was 257,7 million, which is a 70% increase since 1990 and 85 million people increase since 2000. The estimated refugee stock, which also includes asylum seekers was in 2017 25,3 million and in 1990 18,8 million, which is a 34% rise in the global refugee and asylum seekers stock (UN DESA 2017). The most significant share of international migrants come from Asia with 110 million people, and it is also the region, where most of the migrants live as it is home to 80 million international migrants (*Ibid.*). Oceania, where the state of origin of the case study of this paper is situated has the smallest share of international migrants both living there and where they are originated (*Ibid.*). Even though small island states are feeling the impacts of climate change already now, the share of international migrants from that area is the smallest compared to the other regions of the world.

As mentioned previously there is more information available on the migrant stock than migrant flows, and therefore some researchers have used changes in migrant stock data as a proxy for international migrant flow data to give a comprehensive view. Guy Abel and Nikola Sander (2014) analysed changes in the international migrant stock provided by the UN to estimate migration flows globally by five-year intervals from 1990 to 2010 (Abel & Sander 2014). According to their data, the most significant share of migration flows tends to occur within the same region or to neighbouring regions. The data indicates that the most critical migrant flows are between South and West Asia and from Latin to North America, and within Africa (Abel & Sander 2014a). The data showed that the global migration movements are from less developed to more developed countries and that less developed countries in Asia, Africa, and Latin America have more significant outflow than inflow (*Ibid.*). It confirmed the general understanding of migration, such as that the main inflow of migrants is into North America, followed by South

Asia to the Gulf states in Western Asia (*Ibid.*). People from Europe moved to different regions, and there was not seen one distinctive flow direction (*Ibid.*). Neither is there seen one distinctive flow for migration to Europe as a region. However, the data indicated that the most significant flow to Southern Europe is from Southern America. The majority of African migrants, who come from sub-Saharan Africa, were migrating within their region and much smaller share of African migrants was migrating outside their region. For example from 2005 to 2010 an estimated 3,717,881 migrants were moving from sub-Saharan Africa to sub-Saharan Africa, and 1,233,461 were moving from sub-Saharan Africa to Europe (Abel & Sander 2014b). Within Africa, there is seen a distinctive pattern of people moving within the West African Economic and Monetary Union, which may indicate that the main reason for migration is economic (*Ibid.*).

The migratory flow South Asia and South-East Asia is mainly to Western Asia and North America (*Ibid.*). The main migratory flow from Oceania, where the state of origin of the case study of this paper is situated, is within the region itself. For example from 2005 to 2010 the number of migrants emigrating within the region of Oceania was estimated to be 190,706, which is a relatively small portion of total people migrating to Oceania as a region and holding the 4th place of people migrating to Oceania after South Asia, South-East Asia and East Asia, but compared to the 2nd region where people are emigrating from Oceania- Western Europe with the estimate of 28,276 people, relatively big (*Ibid.*). For example, small island state Fiji has a total of 36,061 migrates from 2005 to 2010 and the most significant share of the number of migrates is taken by Australia with 12,334 and New Zealand 10,807 people (*Ibid.*). When looking at data from 1990 the most significant share of migration flow from Fiji has been towards Australia and New Zealand, which both are in the same region. However, from 1995 to 2000, the highest flow was to the United States, which is the third destination for Fiji's migrants (*Ibid.*). Even though there is no data on Kiribati, which is the focus of the case study of this paper, by Abel & Sander it could be expected that the biggest share of future EDP's of Kiribati will migrate similarly to Fiji's migrants within their region to more developed countries, such as New Zealand and Australia.

By data provided by Abel and Sander, there are seen some specific trends in the migratory flows around the globe. They indicated that the migratory flows in the future are expected to persist the same as from 1990 to 2010 (Abel & Sander 2014a). However, different regional or global events,

such as climate change impacts, trends in the human capital and demography may change the migration flows. Therefore, it is essential to understand what are the causes of the migration to understand, how these migration patterns are created.

### **3. DEFINING ENVIRONMENTALLY DISPLACED PERSONS**

Climate change effects are projected to be one of the growing cause of migration in the contemporary times. People influenced by climate change effects are likely to migrate and resettle firstly within their state borders, however, when the adaptation strategies are exceeded then the movement will likely be international (IPCC 1997, 7-14). There are different terms, often used interchangeably, for those displaced by climate change, such as environmental refugee, environmental migrant, environmentally motivated migrant, environmentally displaced person, environmental displacee, ecological refugee, climate change refugee (Boano, Zetter & Morris 2008, 4). Till now none of those terms has been accepted in international law as the official definition of people displaced by climate change (*Ibid.*, 7). This section of the paper outlines the discussion on defining EDP; however, it will cover only the most commonly used terms relevant to this paper.

#### **3.1. Environmental studies approach**

The issue of EDP was delineated already in the mid-twentieth century by Vogt (1948) while he outlined the issue of 'ecological refugee' (as cited in McLeman, & Gemenne 2018). Two decades later, in the 1970s, in his speeches and reports of the Worldwatch Institute, an environmentalist Lester Brown referred to environmentally displaced people as 'environmental refugees' (Black 2001, 2). According to Black (1998) and Kibreab (1997, 21), the term was subsequently mentioned in a briefing document of the International Institute for Environment and Development in 1984 (as cited in Morrissey 2009, 3). However, the denomination did not find a wider audience before 1985, when Essam El-Hinnawi (1985) officially represented the concept of 'environmental refugees' in a UNEP policy paper of the same name (as cited in McLeman, &

Gemenne 2018). Essam El-Hinnawi (1985, 4) defined environmental refugees as follows:

*"Environmental Refugees are those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life."* (as cited in Cardy 1994, 4).

Essam El-Hinnawi offered a classification for environmental refugees, following the rules of the three main aspects many scholars have outlined as pushing factors for environmental migration-extreme environment related event, development and using or protecting resources and inadequate resources to support human life (*Ibid.*, 2-3). The first category he outlined was those people on the move, who have been displaced temporarily by environmental stress; for example natural hazards such as earthquakes, cyclones or an environmental accident (as cited in Cardy 1994, 4 and Gemenne 2009, 114). The second category of environmental refugees he brought out are those people, who are permanently displaced and resettled because of permanent man-made environmental changes in their original habitat, such as establishing large reservoirs or accidents where their environment becomes unsafe because of man-made events, such as nuclear accidents (*Ibid.*). The third category he outlined was those people, whose environment has been deteriorated and therefore is not able to offer a source of living, which makes people resettle temporarily or permanently in a habitat, what is able to offer them a better quality of life (*Ibid.*). All of these three categories given by Essam El-Hinnawi cause firstly migration within their country of origin as people tend to stay close to their homes to move back to their place of origin when possible. However, according to Cardy, the third category could be the base for environmental refugees as those people will more likely migrate transnationally and therefore can be officially defined as refugees (Cardy 1994, 3).

Even though the definition by Essam El-Hinnawi is well cited and used widely, it has been criticised by many scholars for offering a qualification to be a refugee to too many people leaving their homes and making no distinction between the people, who leave their home voluntarily and who are forced to do so. For example, Bates (2002, 466) notes that Essam El-Hinnawi definition for environmental refugee equalises migrants, who leave their home

because of natural hazards and those who are not able to grow food for themselves and their families (as cited in Gemenne 2009). The main problem with this concept is the significant number of people qualifying to be an 'environmental refugee', which makes this concept broad and less useful as it makes it more challenging to persuade states and agencies to offer these people assistance and protection. Moreover, Suhrke (1993, 6) noted, in this definition, there is no classical distinction between forced and voluntary migrants, which increases the number of people defined as 'refugees' as a broad classification means large numbers (as cited in Gemenne 2009, 115). Irrespective of the criticism on the definition offered by Essam El-Hinnawi, the concept was subsequently developed further.

Already a few years later the Worldwatch Institute working paper written by Jacobson offered a categorisation similar to the preliminary one offered by Essam El-Hinnawi within the environmental refugee concept (Jacobson 1988, 5). He emphasised, that an environmental refugee is a person fleeing from environmental decline and brought out three categorisations: temporary displacements caused by temporary environmental stress, permanent displacements caused by permanent environmental stress and temporary or permanent displacement, which is caused by a progressive environmental change (*Ibid.*, 5-6). Even though environmental refugees outlined by Essam El-Hinnawi and Jacobson could be seen as displaced people as people are not leaving their homes because of their choice but a necessity, they are both defining environmental refugees broadly, and it is hard to distinguish if people are moving voluntarily or it is the case of forced migration. Moreover, neither of those definitions took into account that migration usually has multiple reasons as mentioned in the previous chapter. Such as other push and pull factors of the country of origin and the country of destination, which makes it extremely difficult to determine if people are migrating because of environmental degradation or because of some other reasons.

### **3.2. Refugee studies approach**

As researchers working with the environment developed both of the definitions, they were concentrated instead on the environmental aspect than on migration, and the high numbers of possible environmental refugees have been used to draw attention to environmental problems to create better environmental policies. Therefore, Essam El-Hinnawi and Jacobson papers were accepted well in environmental studies and were discussed widely in public, however, the concept of environmental refugee, which was offered by Essam El-Hinnawi was rejected by many scholars in refugee studies, where adequate migration policies could be formed for protecting the people, who are already on the move because of environmental degradation (Suhrke 1993, 6). This not because academics in refugee studies do not think that there should be this category of refugees, but because the definition is too broad, which makes the concept ineffective. Therefore, Suhrke and Visentin (1991) noted that there should be a more "precise" and "narrow" definition for an environmental refugee (as cited in Gemenne 2009).

To make the environmental refugee definition more narrow, Suhrke and Visentin brought the concept of voluntary and involuntary migration into environmental refugee definition and made two classifications- 'environmental refugee' and 'environmental migrant'. Where an 'environmental refuge' is a person who is displaced because of immediate and severe change in the environment, what cannot be reversed and environmental migrant is a person displaced because of environmental situation is gradually worsening but who leave their place of origin voluntarily by a rational choice (Suhrke and Visentin 1991, 77 as cited in Gemenne 2009). According to their definition, the environmental migrant is only a refugee when there is forced displacement because of sudden or drastic change in the environment.

Further development of the concept of the environmentally-related population movements, which placed the discussion first time in the migration theories, was offered by Richmond in his book called *Global Apartheid*, where he has a chapter dedicated to 'environmental refugees' (Richmond 1994, 82). He offered a differentiation of international and internal migration and also between proactive and reactive migration, where he offered a continuum between proactive

migrants, who seek to maximise their net advantage by rational choice and those who are reactive and migrating in a state of panic as a result of intolerable threat (Richmond 1993). He suggested that proactive and reactive migration should take the place of forced and voluntary migration and it should be developed into a new model about people who are displaced (Richmond 1994, 82). He brought out not only that it is difficult to estimate the number of people migrating because of environmental reasons but there are mixed reasons for migration, and it is difficult to isolate environmental reasons from others. He points out the difficulties to estimate the numbers as they depend on what timeframe the movements are counted for, if global migration is taken into account, if both migration within state borders and international migration is taken into account and if the environment is taken as the leading cause for migration or population movement is seen as a result of mixed reasons such as political, economic and social (*Ibid.*).

UN-related organisation, the leading inter-governmental organisation in the field of migration IOM is abstaining to use the term environmental refugee as the term refugee suggests that these people have the same rights as refugees defined in The Convention Relating to the Status of Refugees and its 1967 Protocol (Boano, Zetter, & Morris 2008, 7). Moreover, the term environmental refugee is not in line with the meaning of the different definitions of forced displacement, such as refugees, who have migrated internationally and internally displaced persons, who are migrating within their own country (*Ibid.*, 7). Instead, using the term environmental refugee, they have offered for the environmentally-related population movement a new term- the environmental migrant, which is now widely used. The term was defined in 2007 two-day expert seminar on Migration and the Environment organised by IOM followingly (IOM 2008, 23):

*“Environmental migrants are persons or groups of persons who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad.”*

As this definition is too broad, three classifications were proposed, such as 'environmentally

motivated migrants, 'environmentally forced migrants' and 'environmental refugees' (IOM 2008 24). The environmentally motivated migrants are on the move because their livelihoods and communities will be probably devastated 'in the near future because of the impacts of climate change. They can be displaced for short periods of time and then return to their homes when the situation gets better, or they may be displaced permanently. This group of people is often labelled as economic migrants, and it is stated that for these people the proper environmental policy could result in them staying in their country of origin (*Ibid.*, 24). EDP's are forced to leave their homes as they have lost their livelihood at home. For these people, the displacement is mostly permanent (*Ibid.*, 24). The people from small island states migrating because of the sea level rise or because of loss of topsoil could be included in this group of 'environmental migrants'. The third group of 'environmental migrants' IOM classifies as environmental refugees are those fleeing disasters (*Ibid.*, 24). What makes these people distinct is the immediate danger to their lives, when not migrating. The third category could enforce both permanent and temporary displacement. Therefore according to IOM only those, whose lives are in immediate danger could be referred to as refugees. However, it was stated that those definitions are not exhaustive of the concept of environmentally related migration and they do not exclude the possibility of the emergence of sub-definitions, what would be aligned with possible improvements of international law.

IOM (2011, 34) has defined the people on the move either staying in their own country of origin or crossing international borders as a result of environmental degradation, deterioration or destruction, however, who might also have other reasons for migrating- 'environmentally displaced person'. They suggest that this term should be used in the case of forced international displacement instead 'environmental refugee' or 'climate refugee' which both are used widely but do not have legal basis or justification in international law (IOM 2011, 34 as cited in IOM 2014, 13).

As seen from the discussion, there is no consensus either in the international community nor in the academic circles on the definition of the people displaced because of environmental reasons as most of the migration-related definitions are still working definitions and are not universally accepted. It is a matter of definition and the purpose this definition is created for. The term

environmental refugee is used widely even though it does not have an accepted definition in international law and has not been promoted by the United Nations (Boano, Zetter, & Morris 2008, 7). Instead, the term ‘environmental migration’ is offered to label climate change induced population movement. McGregor (1993, 158) noted that the concept of environmental refugee, or a new refugee category, called ‘environmental refugee’, brings more confusion than clarification as it does not have a conceptual and legal basis. Therefore IOM has offered the term environmentally displaced person for those forcibly displaced by climate change internationally. In this situation of confusion, where there is no legally accepted definition for environmental refugee, there is no protective legal framework for the people on the move because of climate change impacts. Even though some academics define environmental refugees as all the people, who are displaced because of environmental reasons internally or externally, this paper includes in the concept just those people who are displaced externally by the effects of climate change and where the international community has the responsibility to offer protective legal framework.

## **4. THE CASE STUDY OF KIRIBATI**

### **4.1. Human-induced climate change**

Since the mid-20th century, the increasing concentrations of greenhouse gases in the atmosphere and therefore human impact on the environment has been the principal cause of global warming (CDKN 2014, 4). The Intergovernmental Panel on Climate Change (hereafter referred to as IPCC) projected that the warming caused by anthropogenic emissions from the pre-industrial period to the present would continue to advance the long-term changes in the climate system (IPCC 2018). Even if the whole population of the world will cut greenhouse gases emissions sharply the world will still face further warming as a result of past emissions and inertia in the climate system (CDKN 2014, 8). According to IPCC (2018), human activities, such as greenhouse gas emissions have caused around 1.0°C of global warming above pre-industrial levels and it will likely arrive at 1.5°C between 2030 and 2052 if the temperature continues to increase with the same space. The likely long-term changes in the climate system are advancing sea level rise, escalation in surface air temperature and sea surface temperature, an extension of average rainfall and ocean acidification (Australian Bureau of Meteorology & The Commonwealth Scientific and Industrial Research Organisation 2011, 103-105). The influence of climate change is felt all around the globe already now as it is not only affecting ecosystems but also livelihoods, infrastructure and coastal areas (CDKN 2014, 8). As a result of sea level rise the coastal areas, and therefore Small Island Developing States are on the first line for the effects of climate change. The developing states are especially vulnerable as they lack the economic or operational means to cope with the impacts of climate change (Locke 2009, 172). The vulnerability of a state to climate change impacts depends on the economic, social, demographic, cultural, institutional and governance circumstances and therefore the strategies to build up states resilience and help to protect the state citizens have to be specifically tailored for the state or a region (CDKN 2014, 5).

Already in the first assessment report in 1990 of IPCC, it was anticipated that the most significant effect of climate change could be the response to the climate change by human migration (IOM 2010, 3-4). Even though different organisations and academics widely use Norman Myers (2002) estimate that by 2050 there will be 200 million displaced people due to climate change, this paper author takes it as a robust estimate for two reasons. As mentioned previously, the migration has multiple causes, and it is not possible to distinguish environmental migration from other forms of migration. Furthermore, as discussed previously, the data collected on migration flows needs further development in order to map the mixed reasons for migration. Moreover, Myers methodology has been criticised by its shortcomings as it is offering a definite connection between risk and migration (Castles 2011, 418). However, the number is still brought out as it gives the understanding of the scope of this global issue. The Small Island States chapter of the Fifth Assessment Report of IPCC concludes that climate change-induced sea-level rise, coastal flooding and storm surges put at risk the long-term ability of citizens to inhabit low-lying atoll island nations (CDKN 2014, 12). The impacts of climate change will bring more poor livelihood conditions for the people or even lead to the disappearance of the land due to sea-level rise or make it uninhabitable because of severe coastal flooding and storms. This poses an immense risk to small nations sovereignty including loss of territory, people and culture.

## **4.2. Climate change and Kiribati**

The Republic of Kiribati is a small low-lying atoll state in the Central Pacific Ocean. This Micronesian island state consists of three groups of islands: the Line Islands in the east, the Phoenix Islands in the middle and the Gilbert Islands in the west. The Republic of Kiribati has 32 coral atolls and reef islands and one limestone island- Banaba (Donner, & Webber 2014, 333). As the majority of the states islands are low-lying atolls and less than 2 m above mean sea

level, the effects of climate change, such as seawater rise, coastal erosion and saltwater intrusion into freshwater aquifers are perceived already now (Woodroffe 2008, 88). Roughly half of the population of The Republic of Kiribati's 110,000 people live in the overcrowded capital South Tarawa, which makes the impacts of climate change, such as availability of clean drinking water, especially severe (National Statistics Office 2016, 31). The economic situation of the state doesn't help the situation as Kiribati is one of the poorest states in Oceania and was ranked fourth in the extent of the loss of GDP as a result of extreme weather events in 2015 and between 1996 to 2015 by GermanWatch (UN 2017, 143; Kreft, Eckstein, & Melchior 2016, 23).

As Kiribati is a low-lying atoll state, the nation faces an increasing risk of losing their territories due to coastal flooding and coastal erosion, and sea level rise (CDKN 2014, 17).

In combination with other climate change impacts such as storm surges and flooding, this creates a threat of forced displacement from low-lying coastal areas in Kiribati and other Pacific island states (*Ibid.*, 17). It might influence the relocation domestically to the higher regions but also migration into nearby countries. This depends on the government ability to support relocating people from low-lying areas into higher and provide protection from storm surge, building sea walls and surge barriers and taking other means to protect the citizens from the impacts of climate change (*Ibid.*, 17).

According to IPCC with 4°C warming the sea level rise has been predicted to be 0.5 to 2 meters, and this could lead to between 1,2 and 2,2 million environmental migrants from the Caribbean, Indian Ocean and Pacific Ocean (Nurse et al. 2014, 1639). Scientists suggest that Kiribati is at risk disappearing altogether by the middle of the century (Loughry, & McAdam 2008, 51), what might bring a big wave of migration and in a long-term could lead to the disappearance of Kiribati's culture altogether. As Locke (2009, 178) suggests, it is highly unlikely that one recipient country will offer asylum for the entire nation, that means that the asylum seekers will be divided up by recipient nations and it is harder to keep their culture while integrating into another one.

I-Kiribati's, people from Kiribati, ancestors were using traditional adaptation method- migrating from outer-islands to inter-islands when their livelihoods were at risk (*Ibid.*, 172). Moreover, this is seen by the growing population of South Tarawa, which has brought overpopulation issues to

the capital island. This traditional adaptation method is not sustainable as the living conditions are getting worse with population growth and with the impacts of climate change nation faces even vaster danger during extreme weather events hitting the same island when the majority of the population lives in one island.

For example in the 1970's most of the agricultural system of a small island nation east of New Zealand- Tokelau was destroyed due to a hurricane and New Zealand initiated a relocation programme relocating most of the population to New Zealand, where the majority of Tokelauans still live (Moore, & Smith 1995). Another example of a relocation scheme is from Kiribati under the British Empire. In 1940s Kiribati's Banaba Island was made uninhabitable by the exploitation of phosphate and majority of the Kiribati population from Banaba Island were relocated to Rabi Island in Fiji (Loughry, & McAdam 2008, 52). Migration is not the only adaption method for coping with climate change effects; however, it is a considerable choice especially for the low-lying island states, who are in danger to lose their lands. The migration is a result of multiple push-and-pull factors, but climate change effects could become more important in influencing individuals choice to migrate or not. Relocation due to the impacts of climate change is not a new idea also for the government of the Republic of Kiribati. In the 60th session of the UN General Assembly in 2005, Kiribati's ex-president, Anote Tong, acknowledged that most forms of adaptation to climate change might be too late for their nation and they need to consider the option of relocation (*Ibid.*, 51). The outmigration of Kiribati is limited, especially to developing countries, which restrict the number of Kiribati's immigrants allowed to remain in their state. The main problem Kiribati is facing is that environmental migration is not recognised in any binding international treaty and no individual country has accepted climate change refugees, so there are no legal means to protect environmental refugees of Kiribati and other nations, who are faced with severe impacts from climate change (Brown 2008, 36).

### **4.3. Kiribati 'environmental refugees' and the 'Refugee Convention'**

Although Kiribati does not have many strategies left for climate change adaptation and they are likely forced to migrate, the state officials do not want that the people from Kiribati would be

referred to as 'refugees' as it takes away these people's dignity. Kiribati's ex-president Anote Tong stated in an interview that talking about people fleeing impacts of climate change and referring to them as climate refugees is like blaming the individuals forced to migrate not the real culprits of the climate change (Interview with President Anote Tong 2009 as cited in McAdam 2013, 41). The culprits, in this case, are the industrialised countries, who have failed to reduce greenhouse gas emissions. Nevertheless, the term 'refugee' is widely used not only by researchers and policymakers but also by citizens of Kiribati, who have asked for asylum based on the threat of climate change impacts.

The 'Refugee Convention' seems to be the reasonable legal ground for people to seek refuge due to forced displacement from their country of origin because of rising sea levels or other effects of climate change. However, in order to get legal protection as a refugee from the country of destination, the individual has to fit into the criteria of a 'refugee' definition in international law brought out earlier in the section of the 'Refugee Convention'. Already in the '90s, there were cases, where refugee protection was considered for people fleeing the impacts of climate change. For example in the case of a natural disaster in Bangladesh and drought and destitution in Fiji (*Mohammed Motahir Ali v Minister of Immigration, Local Government and Ethnic Affairs* 1994 as cited in McAdam 2013, 47). In the 2000s there have been several cases in Australia and New Zealand, where individuals from the Small Island States such as Tonga, Tuvalu and Kiribati have asked for asylum because of climate change impacts (McAdam 2013, 47). However, this paper will concentrate on Kiribati's citizen Ioane Teitiota asylum case in New Zealand to discuss whether the 'Refugee Convention' is sufficient for giving protection to a 'climate change refugee'.

In 2013, Ioane Teitiota applied for recognition and protection in New Zealand under the 'Refugee Convention' as a result of climate change impacts to his country of origin (Baker-Jones, & Baker-Jones 2015, 103-104). He migrated to New Zealand in 2007 with his wife, they overstayed their work permits after their expiration in 2010 and were staying with their three children illegally in New Zealand from 2010 (*Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment* 2015). After being arrested Mr Teitiota asked for asylum under section 129 of New Zealand's Immigration Act 2009 (*Ibid.*). However, the claim was

refused by the refugee and protection officers, and therefore Mr Teitiota appealed it to the Immigration and Protection Tribunal, where it once again was dismissed (*Ibid.*). The Immigration and Protection Tribunal function, in this case, was to ascertain if Mr Teitiota met the legal criteria of New Zealand law to be accepted as a refugee in New Zealand (*Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment* 2013). New Zealand law is in conformity with the 'Refugee Convention', which means that the refugee is defined in the New Zealand law as in the convention (New Zealand: Immigration Act 2009 2009). He continued with appeals to the Court of Appeal and Supreme Court of New Zealand, who conclusively took the final decision in 2015 to refuse the protection as Mr Teitiota didn't fit in the criteria of a 'refugee' defined in the convention (*Teitiota v The Chief Executive of Ministry of Business, Innovation and Employment* 2014; *Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment* 2015).

According to the 'Refugee Convention' in order to be labelled as a refugee, there should be a persecutor as brought out in the definition of the 'Refugee Convention' (UNHCR 2010, 46). Even though The Supreme Court of New Zealand, based on the hearing of the same case in the Immigration and Protection Tribunal, found that there could be involved a non-state actor in the understanding of the phrase being persecuted, and there could be a possibility of climate change impacts giving the grounds for being protected under the 'Refugee Convention', there should be some form of human agency, which was missing in this case (*Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment* 2013; *Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment* 2015). The reason for displacement for Mr Teitiota was climate change, what is not human and as the 'Refugee Convention' needs human actors, such as government or non-state actor, which the government is unable to manage to precipitate the harm. Therefore the climate change cannot be the persecutor according to the 'Refugee Convention' (*Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment* 2013). Moreover, the Tribunal's reasoning was seen correct by the Supreme Court of New Zealand related to the threat of being persecuted, when returned to Kiribati (*Teitiota v The Chief Executive of Ministry of Business, Innovation and Employment* 2015). The Tribunal found that Mr Teitiota is not facing persecution if returned to Kiribati (*Teitiota v The Chief Executive of Ministry of Business, Innovation and Employment* 2013). As brought out previously

the government of Kiribati is trying to find different solutions for adaption for the impacts of climate change, such as protecting people from storm surge, building sea walls and surge barriers and cannot be labelled as a persecutor even though Kiribati may lack adaptive strategies to climate change impacts. Even though, as brought out this paper previously, the climate change is human-induced and therefore the industrialised states, who are mainly responsible for the carbon emissions and therefore also for the climate change could be seen as persecutors, the Supreme Court found that the International Community doesn't have impetus to harm low-lying states, such as Kiribati (*Ibid.*).

Secondly, the fear of persecution should be well-founded as stated in Article 1 of the 'Refugee Convention' (UNHCR 2010, 46). In the case of Mr Teitiota, the claim was based on fear of persecution by climate change, and there was offered evidence for the climate change effects on Kiribati (*Teitiota v The Chief Executive of Ministry of Business, Innovation and Employment* 2013). Even though, the evidence was accepted by the Tribunal entirely, the Tribunal and also the Supreme Court found that the fear of future persecution is not well-founded, even though his life standard will not remain as high in Kiribati as in New Zealand, there were found no evidence that he or his family would face physical danger or that he would be unable to provide food or water for the family (*Teitiota v The Chief Executive of Ministry of Business, Innovation and Employment* 2013; *Teitiota v The Chief Executive of Ministry of Business, Innovation and Employment* 2015).

Thirdly, the definition of a refugee states that there are specific reasons in which case the refugee protection is granted, such as "reasons of race, religion, nationality, membership of a particular social group, or political opinion" (UNHCR 2010, 46). As in the case of Mr Teitiota the persecutor, climate change, does not discriminate on any of those reasons and the effects of climate change are experienced by all the nationals of Kiribati, and any group of society is not marginalised, therefore the 'Refugee Convention' scope is too limited to provide protection for Mr Teitiota (*Teitiota v The Chief Executive of Ministry of Business, Innovation and Employment* 2013).

Fourthly, to be qualified as a refugee the person needs to have crossed international borders (UNHCR 2010, 46). This requirement is filled in the case of Mr Teitiota as he emigrated from Kiribati already in 2007 to New Zealand. However, as other criteria of a refugee under the 'Refugee Convention' were found to be not met in the case of Mr Teitiota, then The Supreme

Court affirmed the decision of the Tribunal and refused leave to appeal against a decision of the Court of Appeal under s 245 of the Immigration Act 2009 (*Teitiota v The Chief Executive of Ministry of Business, Innovation and Employment* 2014). The Court of Appeal of New Zealand expressed their sympathy to Mr Teitiota and even though it found, that the 'Refugee Convention' is unable to address this issue and provide protection for individuals displaced because of climate change it emphasised that climate change is growing issue for the international community and it should be addressed (*Ibid.*). Such as the case of Ioane Teitiota, the other cases where individuals have asked for refugee protection under the 'Refugee Convention' on the grounds of climate change impacts, were all dismissed on similarly (McAdam 2013, 47).

## **5. THE 'REFUGEE CONVENTION' AND LEGAL PROTECTION FOR EDP'S**

Sixty-eight years after its adoption, the 'Refugee Convention' has remained the only international instrument for the protection of refugees. The amendment made in 1967 to widen the scope of the 'Refugee Convention' territorially and lose the time limitation is the only change made to the 'Refugee Convention' heretofore. However, from the creation of 'Refugee Convention', the world has changed. The reasons for migration has not stayed the same as it was at that time. In the '50s there was not a discussion in the International Community about Climate Change effects on migration nor were the effect of Climate Change felt globally at that time that would push people to move across borders (IPCC 2014, 16). The discussion of climate change induced migration firstly occurred in the International Community in the '90s, when the first assessment report of IPCC was published (IOM 2010, 3-4). Even though there is no reliable data on the people migrating because of environmental reasons, there will be an estimated number of 200 million displaced people in 2050 due to climate change (Myers 2002). Even though these people may be forced to leave their state of origin, these people are not legally defined as refugees, what would give them grounds for protection under the 'Refugee Convention'.

The International Community and official bodies of UN are not using the term 'environmental refugee', instead, they use the term an 'environmentally displaced person' as this does not imply that they have any right for protection under the 'Refugee Convention'. Why is it essential to have a legal definition? Because legal definitions bond states to follow it. If an 'environmental refugee' is not defined legally, these group of people have no legal grounds to ask for protection, and therefore the states have no obligation to offer them one. The term 'refugee' is a legal concept with a precise definition written out in the 'Refugee Convention'. Many states have incorporated this into their domestic laws on migration. Aforementioned, New Zealand is using the 'Refugee Convention' definition of a refugee in their domestic law (New Zealand:

Immigration Act 2009 2009). Taking this into account it is not correct to use the term 'refugee' in the case of climate displaced people while speaking about their legal status as according to the 'Refugee Convention' the reasons of climate change is not the ground to be defined as a 'refugee'. However, this does not change the fact that those people need protection just as those legally defined as refugees. Displacement as a result of climate change impacts happens both within the state but also across borders (Christian Aid 2007, 7; IPCC 2014, 16). While, when the migration occurs within one state borders then it lies in the jurisdiction of that state, however, when the migrator crosses borders, then the international law could be applied. The 'Refugee Convention' offers a set of rules, which states have to follow in order to protect displaced persons who have been forced to migrate across borders and who cannot return home safely. However, the 'Refugee Convention' can be used only within its scope. Therefore, to ask asylum for the environmentally displaced person, it is essential to fit in the scope of the 'Refugee Convention' in order to be granted protection on its grounds.

## **5.1. Criteria for determining refugee status**

In this paper, Mr Teitiota claim to ask asylum as climate change refugee in New Zealand was used as a case study to analyse if the 'Refugee Convention' can protect EDP's. The New Zealand court concluded that Mr Teitiota is not offered protection under the 'Refugee Convention' as EDP's do not fit in the definition of a refugee offered in the 'Refugee Convention' (Teitiota v The Chief Executive of Ministry of Business, Innovation and Employment 2014). Similar discussions have been in different courts, and none of them has given any individual asylum under the 'Refugee Convention' on the grounds of climate change impacts (McAdam 2013, 47).

### **5.1.1 Crossing international borders**

The first criterion to be filled in order to ask for asylum under 'Refugee Convention' is crossing the state borders (UNHCR 2010, 46). Aforementioned, most of the climate change induced migration is within one state borders and most of them, therefore, do not fill this criterion

(Christian Aid 2007, 7). In the case study of this paper, Mr Teitiota has crossed the border and therefore filled this preliminary criterion to be considered as a refugee (*Teitiota v The Chief Executive of Ministry of Business, Innovation and Employment* 2015). However, this is a limitation for using the 'Refugee Convention' for the protection of climate change migrants as even if it could be used to offer them protection by other grounds, then it could only offer protection for the smaller group of people- those who migrate internationally. Even if there could be added another protocol widening the scope also to climate change migrants, then there would be still the limitation of offering the protection only, when the migrator has crossed the border. Moreover, this is only an essential requirement, what needs to be filled in order to gain the legal status of a refugee and protection from the country of destination.

### **5.1.2. Persecution**

Another criterion for obtaining the status of a refugee is the element of persecution (UNHCR 2010, 46). Even though climate change impacts, such as sea level rise, desertification or extreme weather events like floods or hurricanes may cause severe harm and people may be forced to leave their place of origin or even their state of origin it is questionable if those effects may be considered as persecution. As seen from the reasoning of the New Zealand court on the case of Mr Teitiota, there is needed some form of human involvement in the case of persecution (*Teitiota v The Chief Executive of Ministry of Business, Innovation and Employment* 2013; *Teitiota v The Chief Executive of Ministry of Business, Innovation and Employment* 2015). Mr Teitiota claim, that the State of Kiribati should be held responsible as they have limited adaptive strategies to protect its citizens from the sea level rise and that the International Community should be held responsible for the greenhouse gas emissions, may be right in the sense of moral responsibility (*Teitiota v The Chief Executive of Ministry of Business, Innovation and Employment* 2013; Eckersley 2007, 253). However, there is no legal responsibility under the 'Refugee Convention' as neither of them could be said to be persecutors. The Kiribati government is interested in protecting its citizens and has implemented different adaptive strategies to do so (Loughry, & McAdam 2008, 52). Therefore Kiribati as a state cannot be a persecutor. The International Community holds moral responsibility for climate change; however, the International Community likely has no interest in persecuting Kiribati's people and

therefore can not held legally responsible as a persecutor either (Eckersley 2007, 253). In the claim of persecution, there needs to be a discriminatory side on it. However, climate change is affecting all Kiribati's people and is not discriminating anybody. The 'Refugee Convention' was created for protecting people fleeing from their country from their government or non-state actors in their state. However, as mentioned earlier people tend to migrate to the developed countries with more possibilities and in the case of climate change, the people are fleeing to the states, who are often the leading cause of climate change. In other words, people are fleeing to the states, who are their persecutors. However, this shows that the 'Refugee Convention' cannot be used to address migration because of climate change as it would be turning the 'Refugee Convention' upside down, the persecutors would be the ones offering protection. Nonetheless, even if it could be reasoned that the International Community or developed states are persecutors through being the leading cause of the climate change the element of discrimination remains to be filled as climate change impacts are not prejudiced. In the case of Mr Teitiota, this claim was dismissed (*Teitiota v The Chief Executive of Ministry of Business, Innovation and Employment* 2015).

### **5.1.3. Reasons of persecution**

Moreover, there are five grounds mentioned in the 'Refugee Convention' for the base of a discriminatory element, which are "race, religion, nationality, membership of a particular social group or political opinion", which need to be met to gain a status of a 'refugee' (UNHCR 2010, 46). In the case of climate change impacts there can't be found any of that as even though climate change has different effects around the globe, they are not based on any of those grounds. However, as mentioned by the New Zealand court during the case of Mr Teitiota their decision doesn't mean that there is not a possibility to get a refugee status fleeing the climate change impacts (*Teitiota v The Chief Executive of Ministry of Business, Innovation and Employment* 2015). Each case has to be considered individually.

## **5.2. Possibilities of protection for EDP's under the 'Refugee Convention'**

EDP's could be granted asylum in cases where the environmental change effects are not the sole reason for migration and if there is proven persecution, where a human actor is involved. For example, if people are fleeing their country because of natural disasters or environmental degradation, but their state is withholding assistance on purpose for certain groups of the society and therefore discriminates them (McAdam 2013, 46). Another possibility to have grounds for asylum under the 'Refugee Convention' would be if the government discriminates some groups of people, who are already in a difficult situation because of climate change effects. For example when as a result of the climate change impacts the land is no longer suit for farming or the fertility of the land has gone down and the people, who are dependent on farming suffer because of that and the government applies discriminatory policies on those farmers (*Ibid.*, 47). Another ground for getting a refugee status would be in the case of environmental destruction, which is linked directly to the government, such as polluting the land or water (*Ibid.*, 47). There is a possibility also for asking for asylum in the case where the government denies help from other states in the case of environmental disaster (*Ibid.*, 48). As mentioned before, a hazardous event can be for one state hazardous event, but for another a disaster depending on the states adaptability and measures they can make to protect their citizens. When it could be proven, that the government doesn't protect their citizens in a case of disaster by implementing appropriate measures to prevent a disaster, then there could be a possibility for asking for protection under the 'Refugee Convention' (*Ibid.*, 49). For all those different possibilities for asking for protection under the 'Refugee Convention,' it is seen that there is a human actor involved. However, not the only human actor is necessary, but each time it is needed to be proven, that there is persecution on those five grounds of the 'Refugee Convention'. Therefore, it is possible and likely that a person fleeing climate change impacts may get the status of a refugee, however only if the person has migrated internationally, is persecuted by any five reasons mentioned in the 'Refugee

Convention', is unable to return to their state of origin because of well-founded fear of future persecution and who is not protected by their own country of origin.

### **5.3. New International Framework for refugee protection**

The 'Refugee Convention' was created to protect people, who would be persecuted in their own country and therefore it was created to address the issues in that era. Even though this issue is still relevant, it is not the only reason for migratory movements in contemporary time. During the creation of the 'Refugee Convention,' the number of people on the move was smaller than in the contemporary world (UN DESA n.d.). At that time the 'Refugee Convention' was enough to protect the neediest migratory groups. However, in the world, where much more people are involved in migratory movements, and refugee inflow is in masses the 'Refugee Convention' is not enough to address this new situation the world is facing. Therefore, to tackle the new contemporary migration phenomenon a new international framework should be created for all the people displaced.

The new international framework, which would include environmentally displaced persons should be done according to people's humanitarian needs (Richmond 1994). The author of this paper suggests that the people should be provided protection according to the Richmond proposed continuum of proactive and reactive migration, while the reactive migrate should be addressed first (Richmond 1993). However, this cannot be done under the 'Refugee Convention' as it was not created for that and does not provide international protection based on that criterion. There is needed a new international framework, what would protect all the displaced people based on their humanitarian needs. The creation of the new international protection system is needed, that the states would have an obligation to follow the new humanitarian norms set. This would ensure the international protection for the most needy international EDP's. However, as most of the EDP's migrate within their state borders and are likely to migrate across borders, when their state of origin doesn't have enough adaptive strategies to cope with impacts of climate change, then the new international framework is not enough to address the issue of EDP's. As the

International Community holds the moral responsibility for climate change impacts, it should provide more funds and knowledge for the most affected countries by climate change in order to build their resilience (Eckersley 2007, 253).

## CONCLUSION

This research aimed to examine if the 'Refugee Convention' is able to offer international protection for EDP's and it was hypothesised that the 'Refugee Convention' can be applied for the protection of EDP's. This argument was explored with analysing the case study of Ioane Teitiota application for recognition and protection in New Zealand under the 'Refugee Convention'. The hypothesis that the 'Refugee Convention' can be applied for the protection of EDP's is partially confirmed. It was found that the 'Refugee Convention' is not able to offer protection for EDP's on the grounds of climate change impacts, however it can be applied for the protection of EDP's when the climate change impacts are not the only cause for migration and the criteria to gain the status of a 'refugee' is filled.

The migration is a multicausal phenomenon- there are several push and pull factors, what people take into consideration in making their decision of migration. One of the push factors for migration in contemporary times is growingly climate change effects, such as desertification, sea level rise, coastline erosion, drought or natural disasters. The migration data provided in this paper indicates that there has been an increasing number of people in the move from the start of the '90s. Furthermore, Abel & Sander data analysis indicated that there would be a steady increase in the number of people migrating globally in the future. However, there is no reliable global data available for mapping the mixed reasons for migration and Abel & Sander data does not imply that the increase in the number of people migrating globally is related to climate change impacts. Nevertheless, the officially used estimated number of global EDP's in 2050 is 200 million people, which makes it an important global issue.

The people displaced by climate change are not legally defined as 'refugees'. Even though already in the 1970s the phrase 'environmental refugees' was used by environmentalists, the term 'environmental refugee' is not accepted as a legal term to define EDP's as it would indicate that those displaced by climate change could claim international protection under the 'Refugee Convention'. As it is the foundation of protection for 'refugees', many EDP's ask for international

protection under the 'Refugee Convention'. However, the study found, that the 'Refugee Convention' has not been able to protect the EDP's for three reasons.

Firstly, climate change induced migration occurs mostly internally. The 'Refugee Convention' can offer international protection only while migration occurs across borders; therefore there is a big group of climate change induced migrants, who would remain without any international protection even if they would meet the other criteria of 'Refugee Convention'.

Secondly, climate change and its impacts cannot be considered as persecutors as climate change is not discriminating anybody. Similarly, in most cases neither the originating nor destination country can be the persecutors in the case of climate change impacts migratory movements as there is needed a discriminatory element to support the claim of persecution. However, as brought out in the paper, there is a possibility of international protection for EDP's under the 'Refugee Convention' when the environmental change effects are not the sole reason for migration and the discriminatory element is added by a state actor.

Thirdly, there are five reasons mentioned in the 'Refugee Convention' which offer a base for a gaining an asylum- "race, religion, nationality, membership of a particular social group or political opinion", however, as mentioned previously, the climate change impacts do not differentiate anybody- climate change has different effects around the globe, but they are not discriminatory.

Therefore, this paper concludes, that even though 'Refugee Convention' is still relevant for the people in the move, who fit the criteria of the definition of a 'refugee' by the 'Refugee Convention', it is not applicable for the EDP's such as Mr Teitiota as it is unable to provide protection on the ground of the impacts of climate change. However, 'Refugee Convention' could offer protection to those EDP's who are able to meet the terms of 'Refugee Convention' and for that reason 'Refugee Convention' criteria should be applied on a case-by-case basis.

The 'Refugee Convention' was created as a result of the practical issues related to migration Europe was facing at that era. The 'Refugee Convention' has been amended only once, by the 1967 protocol, even though the refugee situation in the world has changed, which makes the convention outdated to the new migration situation the International Community is facing now. Noting that, the 'Refugee Convention' is still relevant in the protection of the people defined as 'refugees' by the 'Refugee Convention'; however, it is not able to offer protection for EDP's on

the grounds of climate change impacts as it was not created for that. As the 'Refugee Convention' is not able to offer protection for EDP's, who are in need of international protection, there is needed a new international legal framework, what could offer protection based on humanitarian needs. International Community holds the moral responsibility not only offering protection for the EDP's but supporting the most affected states to cope with climate change impacts.

Considering that this paper author faced problems of finding reliable global data on migratory flows a further development and research on the data gathering on migratory flows based on the multiple reasons of migration across the world could be done. Since the author believes that a critical part of migration protection in the contemporary world is a new migration protection framework, what would give protection to different types of migrators based on their humanitarian needs, then this topic should be further developed. For the reason, that the number of refugees and asylum seekers are growing each year, the states seem to be more hesitant to follow the 'Refugee Convention' and provide protection to those defined legally as 'refugees', then it could be analysed if expanded obligations any new framework will set in place is likely to be followed by the international community.

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## APPENDICES

### Appendix 1. Search results (ESTER)

Search term	Publications found (thesis and dissertations) in ESTER	Passed initial screen	Publications chosen for systematic literature review
kliimapagulane	42	5	2
põgenikud	2	2	0
climate change refugee	115	6	3
migrant	3	0	0

Source: Kruuse (2019), author's calculations

### Appendix 2. Search results (Google Scholar)

Search term	Publications found in Google Scholar (exact phrase found in title or anywhere in article)	Passed initial screen	Publications chosen for systematic literature review
climate change-induced migration and Refugee Convention	0	0	0
climate change	102	20	9

refugees			
climate change refugees and Kiribati	1	1	0
contemporary migration phenomenon	77	7	4

Source: Kruuse (2019), author's calculations

## Appendix 2. Search results (EBSCOhost)

Search term	Publications found in EBSCOhost	Passed initial screen	Publications chosen for systematic literature review
climate change-induced migration and Refugee Convention	1	1	1
climate change refugees	46	21	12
climate change refugees and Kiribati	3	3 (2 duplicates with search term 'climate change refugees')	1
contemporary migration phenomenon	11	0	0

Source: Kruuse (2019), author's calculations