Decolonizing refugeehood: The rise of climate refugees as a new legal subjectivity

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Abstract

This article examines the misrecognition of climate refugees as a form of *climate coloniality*, through the lens of decolonial environmental justice (EJ). I address two research questions: (1) Why is climate refugeehood a matter of decolonial EJ? (2) How can decolonial EJ contribute to overcoming the *colonial impasse* that prevents the expansion of the notion of a refugee in international law? This case of climate coloniality is examined through the tripartite notion of the coloniality of power, knowledge, and being to decolonize the concept of refugeehood while rethinking the current model of responsibility and the subjects entitled to it.

Keywords

climate refugees, climate coloniality, decolonial environmental justice, vulnerability, non-state actors

1. Introduction

As a direct result of climate change, extreme weather events and environmental degradation are increasing. Sudden-onset events, such as typhoons and hurricanes, floods, and heat waves, as well as environmental degradation, evident in droughts and desertification or the rise of sea levels, are triggering large-scale displacement, refugee movements, and migration, especially in Sub-Saharan Africa, East Asia, the Pacific, and Latin America (Clement *et al.*, 2021). According to the World Meteorological Organization (WMO), over the last five decades, extreme weather, climate, and water-related events have caused 11,778 disasters and over two million fatalities, with 90% of reported deaths occurring in developing countries. These catastrophes are also accompanied by large economic losses, amounting to approximately US$ 4.3 trillion, with the least developed countries and small island developing states bearing disproportionately high costs relative to the sizes of their economies (WMO, 2023).

According to the Internal Displacement Monitoring Centre (IDMC; 2023), natural disasters now trigger more than half as many displacements as armed conflicts and violence. In 2022 alone, 8.7 million people in 88 countries and territories had to leave their homes because of ecological disasters. However, despite the magnitude of this phenomenon, international law does not protect people who find themselves in vulnerable situations in the aftermath of such disasters. There is a lack of legal recognition for such refugees as emerging legal subjects. The 1951 Geneva Convention and its 1967 Protocol state that overcoming the existing overly narrow definition of a refugee in law by decolonizing the concept of refugeehood itself is necessary. The aim of this article is to show that the misrecognition of climate refugees is not a technical or legal issue. Academic

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proposals, doctrinal endeavors, the 2020 United Nations Human Rights Committee's (UNHRC) historic decision that clarified the necessary conditions to trigger non-refoulement[2] obligations in the context of environmental disruptions, and recent developments have shown numerous alternative legal pathways to overcoming this legal impasse. Rather, misrecognition is more likely to constitute a form of *colonial impasse*, preventing a broader interpretation of what a refugee is today.

After arguing for the revelation of the Eurocentric and colonial roots of the current refugee definition established by the 1951 Geneva Convention, this article examines developments in providing legal avenues for international law to recognize climate refugees as legal subjects. Through the perspective of decolonial environmental justice (EJ) and the tripartite notion of coloniality, in particular, this analysis first explains the persistent, overly narrow interpretation of a refugee. Climate refugees are misrecognized. Second, this impasse surrounds climate refugees, but must be overcome. In conclusion, the article suggests using the concept of vulnerability as it applies to environmentally displaced peoples, and shifting the unit of responsibility from states to nonstate actors.

2. The misrecognition of climate refugees as a case of climate coloniality

The Convention Relating to the Status of Refugees (also known as the Refugee Convention or the 1951 Geneva Convention) was adopted in 1951 and entered into force in 1954 in a context marked by mass displacements in the aftermath of World War II. The Refugee Convention initially had a clear Eurocentric perspective, referring to people fleeing events occurring *before January 1, 1951*, and *within Europe*. The main aim of the Refugee Convention was to meet the needs of European refugees by providing a general definition of a refugee and guaranteeing nonrefoulement. Because of temporal and geographical restrictions, however, those on the move as a result of the post-1945 decolonization process, such as the 10 million displaced people after Pakistan's independence from India, were excluded by the Refugee Convention. To fill this gap and, above all, to ensure equal protection in new refugee situations that have emerged since the Convention was adopted, the 1967 Protocol removed both restrictions. To date, a refugee is defined as a person who,

> …owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."[3]

In line with the Cold War geopolitical context, the five grounds of persecution that legitimated the recognition of a refugee status had to reflect human rights whose protection was not guaranteed in the Eastern bloc. The strategic conceptualization given by Western states to the Refugee Convention aimed to ensure that a refugee status was granted to those whose flight was motivated by pro-Western political values (Hathaway & Foster, 2015). However, as a result of this conceptualization, "those escaping from communist countries were often welcomed (in the US, Canada, Australia, and Western Europe), while refugees from colonial liberation wars in Africa and Asia generally ended up in camps in these regions with little hope of resettlement" (Castles, 2006, p. 19).

Against this background, it is not surprising that the Refugee Convention has been Eurocentric from its conception. It initially protected European refugees only and ultimately generated forms of mobility injustice, facilitating the movement of refugees with pro-Western political values at the expense of others. Furthermore, it ignored the colonial impact of the law because of its historical Eurocentrism. What is surprising, however,

[2] The principle of nonrefoulement consists of the prohibition to expel or return a refugee ("refouler") in his/her home country if his/her life or freedom would be threatened on the ground of his/her race, religion, nationality, membership of a particular social group, or political opinion. See Article 33 of the 1951 Geneva Convention.
[3] See Article 1 of the 1951 Geneva Convention.

is the survival of colonial roots even after the 1967 Protocol broadened its scope to *all* persons for events happening at *any* time and at the end of the Cold War era, after the breakup of the Soviet Union.[4] In this regard, the misrecognition of so-called *climate refugees*[5] can be considered as a case in point for the persistence of the Eurocentric and colonial roots of the Refugee Convention.

In the discussion about the recognition of climate refugees, two legal obstacles are usually emphasized. First, the wording of the definition of a refugee does not include environmental degradation among the grounds of persecution legitimating the recognition of a refugee status. Second, it requires that a person finds himself/herself outside of his/her home country in order to request such a status, but people fleeing environmental disruptions rarely cross borders (Clement *et al.*, 2021; Rigaud *et al.*, 2018). Both legal obstacles might be *technically* overcome by some progress that has been made to expand the overly narrow interpretation of the refugee definition and to go beyond its stringent wording. In this regard, the UNHRC's historic decision in *Teitiota v New Zealand* is a case in point. It is considered a landmark decision, as the HRC gave its ruling, for the first time, on a complaint filed by an individual asking for refugee status due to the adverse impacts of climate change. The case concerned Ioane Teitiota, a national of the Republic of Kiribati, who applied for refugee status in New Zealand in 2013 on the grounds that climate change impacts made Kiribati an untenable and violent environment for him and his family (Cf. Rosignoli, 2022, pp. 61-71). The Immigration and Protection Tribunal, the Court of Appeal (2014), and the Supreme Court (2015) rejected his claim. As a result, Teitiota received a deportation order in September 2015. Once back in Kiribati, he filed a complaint before the HRC, as the deportation resulted in a real risk of impairment to his right to life under Article 6 of the Covenant.[6]

At first glance, the decision not to recognize Teitiota as a refugee seems to be correct, as environmental degradation is not included in the forms of persecution in the definition of a refugee. However, the HRC decision was based on the argument that a real risk of an existing irreparable harm was not met. Thus, the reason for the rejection of Teitiota's claim was not linked to the wording of the refugee definition. Instead, this historic decision specified the necessary and sufficient conditions to trigger nonrefoulement obligations when environmental disruptions threaten/jeopardize the right to life of people living in countries of origin that are turning uninhabitable.[7] In doing so, the HRC paved the way for future climate change-related asylum claims by establishing that:

> …without robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant,

[4] As an example, the double standard privileging European countries/refugees at the expense of non-European countries/refugees still manifests today in the narrow interpretation of *safe countries* and *refugees*. Many countries of the EU have modified their interpretations of the Refugee Convention to exclude countries they define as *safe* and to limit the application of the nonrefoulement principle. Denmark, for example, has been revoking the residence permits of 150 Syrian refugees since 2019 on the grounds that security in Damascus has improved significantly. As for what constitutes a refugee, even the 2018 Global Compact for Safe, Orderly and Regular Migration has recently reaffirmed that the 1951 Refugee Convention's definition of a refugee is the only possible definition, thus excluding people on the move in the aftermath of environmental disruptions from the *refugee realm* and limiting again the application of the nonrefoulement principle. In this regard, see the Teitiota case discussed above.

[5] The term "climate refugee" is considered a legal misnomer, as it has no legal basis in international law. It initially entered the debate with the term "environmental refugees", coined by El-Hinnawi (1985) and defined in a 1985 United Nations Environment Program report as "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" (p. 4).

[6] UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, https://www.refworld.org/docid/3ae6b3aa0.html [accessed 23 August 2023]. See also UN Human Rights Committee (HRC), General comment no. 36, Article 6 (Right to Life), 3 September 2019, CCPR/C/GC/35, available at: https://www.refworld.org/docid/5e5e75e04.html [accessed 23 August 2023], paras 26 and 62 that acknowledge environmental degradation poses a serious threat to the right to life.

[7] For a critical examination of the Teitiota v. New Zealand case, see Behrman & Kent (2020); McAdam (2020) and Rosignoli (2022).

> thereby triggering the non-refoulement obligations of sending states. Furthermore, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized. "[8]

Consequently, the decision shows that the impacts of climate change may expose individuals to human rights violations and trigger the nonrefoulement obligations of sending states once the risk of their countries of origin turning uninhabitable is "declared." Although this decision was criticized for being very demanding in reaching the threshold for uninhabitability up to a form of *probatio diabolica* (Rosignoli, 2022), it was acknowledged that recognizing climate refugees is entirely possible if certain stringent conditions are met. More specifically, a country is declared at risk of uninhabitability when the time frame left makes intervening acts by the sending state impossible. Besides the HRC's decision, there are further doctrinal endeavors by different scholars (Coles, 1990; Cooper, 1997; De Andrade, 2008; Gemenne, 2017; Hathaway, 2017; Shacknove, 1985) and by the UN High Commissioner for Refugees (UNHCR). For example, the UNHCR provided broader interpretations of the term "persecution" and clarified different forms of harm that amount to persecution (De Andrade, 2008). Among such forms of harm, the following is worth mentioning: "…a combination of numerous harms none of which alone constitutes persecution but which, when considered in the context of a general atmosphere in the applicant's country, produces a cumulative effect that creates a well-founded fear of persecution" (De Andrade, 2008, p. 124). In this view, an *environmental persecution* would be conceivable, and, thus, a broader interpretation of the current definition of a refugee is *technically* possible.

In addition, recognizing climate refugees as legal subjects is confronted with the obstacle that people should be outside their own countries when asking for refugee statuses. The literature has already challenged this requirement. As Shacknove (1985) argued, the alienage requirement might not be conceived of as a necessary condition for being granted refugee status. It is not a question about crossing an international frontier or not; rather, it is about demonstrating that potential refugees' basic needs are unprotected by their countries of origin. In this case, international protection is necessary to safeguard the right to life. On this point, Shacknove's interpretation can be applied to the case of climate refugees, at least for two reasons. First, states' positive obligations to provide the necessary conditions for their people to enjoy their rights to life with dignity and to meet their basic needs also include those established under international environmental law. Following this line of reasoning, paragraphs 26 and 62 of the HRC's General Comment No. 36 (2018) on Article 6 of the Covenant acknowledged that environmental degradation, climate change, and unsustainable development pose serious threats to enjoying a right to life, thus reaffirming the idea that states' obligations to meet people's basic rights include those established by international environmental law.[9] Therefore, if it is possible to demonstrate that states failed to ensure these general conditions, including environmental conditions, in order to meet people's basic needs. Those who find themselves in vulnerable situations in the context of environmental degradation might eventually seek international protection. Second, nation-states' centrality and political frontiers are outdated in the current geopolitical context. As detailed in the next section, such a state-centric approach does not capture today's human mobility, in which natural disasters have triggered more than half of the number of displacements resulting from armed conflicts in 2022 (IDMC, 2023). As natural disasters do not respect any political borders most of the time, crossing such frontiers might be irrelevant to granting a refugee status in some circumstances.

To conclude this section, although scholarly efforts and recent developments demonstrate that legal obstacles can be overcome, climate refugees still lack legal recognition and international protection. The

[8] UN Human Rights Committee (HRC), *Ioane Teitiota v New Zealand* UN Doc CCPR/ C/127/D/2728/2016 (7 January 2020).

[9] The historic UN Human Rights Committee's decision in *Teitiota v New Zealand* underlined that states have positive duties to protect life from risks arising from known natural hazards. Although it concluded that Teitiota failed to provide sufficient evidence to demonstrate that he faced actual or imminent harm, it did not exclude the possibility of achieving this goal in future cases.

misrecognition of climate refugees is not a technical issue but a cultural one. It has its roots in colonialism. The overly narrow interpretation of a refugee in the 1951 Geneva Convention's definition, recently reaffirmed by the Global Compacts (2018), and the ongoing ignorance of climate issues can be framed as *climate coloniality* (Sultana, 2022). The latter "occurs where Eurocentric hegemony, neocolonialism, racial capitalism, uneven consumption, and military domination are co-constitutive of climate impacts experienced by variously racialized populations who are disproportionately made vulnerable and disposable" (Sultana, 2022, p. 4). The following sections will explain why these elements can be easily found in the case of climate refugees' misrecognition, and how the colonial impasse that prevents the recognition of this emerging legal subjectivity can be overcome through a decolonial EJ approach.

3. How the decolonial environmental justice approach can help overcome the colonial impasse

This section examines the misrecognition of climate refugees through the lens of decolonial EJ. This perspective helps unveil climate coloniality behind the persistent, overly narrow interpretation of a refugee and, therefore, the exclusion of climate refugees from the *refugee realm*. As this analysis will show, Eurocentric hegemony survives in the superiority of the Eurocentric knowledge regime over alternative forms of knowledge production, in neoliberal governance, and in the international division of labor that underlines the racial differences between Europeans and non-Europeans; these differences perpetuate unequal access to the job market and mobility injustice, border militarization throughout the Global North, and the racialization and resulting disposability of those fleeing environmental disruptions, who are still classified as irregular migrants and left without protection.

To begin with, preliminary clarifications are needed to explain what decolonial EJ is, why seeking the recognition of climate refugees matters, and how doing so may contribute to overcoming the colonial impasse that surrounds the figure of climate refugees.

The concept of EJ was developed in the US in the late 1970s through the activism of social movements, claiming the same degree of protection from environmental risks and equal access to environmental goods. Environmental justice research became a new field of study around the 1980s, when scholars began producing empirical studies to demonstrate that environmental injustices were linked to race and class. Since then, academics have continuously advanced the field. In the early 2000s, a new strand of EJ research was introduced by Pellow and Brulle (2005) under the banner of critical environmental justice studies (CEJ). This had the merit of expanding the spectrum of misrecognition beyond categories of race and class, while shifting the focus of EJ toward a transformative approach aimed at dismantling the mechanisms producing injustices.

Over the years, EJ has seen significant engagement by indigenous scholars. They have increasingly developed the field through a profound critique of the use of the Western categories of *justice* and *environment*, an overly narrow focus on distributional injustices, and an overly state-centric approach (Álvarez & Coolsaet, 2020). Known as decolonial EJ, this new frontier of EJ is rooted in the concept of coloniality conceived in its threefold understanding of the coloniality of *power*, *knowledge*, and *being* (Álvarez & Coolsaet, 2020; Escobar, 2007; Grosfoguel, 2007; Mignolo, 2012; Quijano, 2000; Rodriguez, 2020). Coloniality is used here as the persistence of practices shaped by unequal power relations inherited by colonialism within contemporary societies (Maldonado-Torres, 2011). These practices include:

(1) the persistent racial differences between Europeans and non-Europeans through various forms of subjugation, including the use of Western institutional forms of power in non-Western societies (coloniality of power; Quijano, 2000);
(2) the persistent epistemological form of subjugation aimed at reaffirming the superiority of European knowledge over non-European knowledge (coloniality of knowledge; Mignolo, 2012); and

(3) the persistent construction of hierarchical subjectivities, resulting in the dehumanization of certain groups perceived as *inferior* and *unworthy* as opposed to other privileged groups conceived as *superior* (coloniality of being; Maldonado-Torres, 2007).

In this context, a decolonial approach to environmental justice using this tripartite notion of coloniality helps to understand and explain why climate refugees represent a form of climate coloniality in the first place. First, the coloniality of power emerges from the construction of racial hierarchies—created through colonization—that keep imposing racial differences between Europeans and non-Europeans to determine who should stay and who should go, while imposing Western forms of power, such as the nation-state. This racial discrimination implies a double standard; that is, the movement of European migrants is facilitated through the creation of the Schengen Area,[10] while non-European migrants are prevented from movement at the source. Anti-immigrant policies often allow curbing migratory flows by preventing landings and restricting opportunities for asylum seekers from the so-called Third World[11] (Kukathas, 2016). In line with neoliberal governance and the international division of labor, such racial differences between Europeans and non-Europeans emerge clearly in unequal access to the job market and through 'mobility injustice.' For example, European Union (EU) migration policies are designed to facilitate the movement of (perceived) high-skilled migrants who successfully adapt to the labor market and the societies of destination countries in Europe, while restricting access to non-European migrants. In this regard, Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 introduced discriminatory rules for both non-EU low- and highly skilled workers compared to EU or national workers. Member states are to prioritize a national or Union workforce, with few exceptions, when filling vacancies.[12]

In turn, the right to exclude non-nationals of Europe ultimately depends upon the prevailing doctrine of state sovereignty under international law, which is still built upon the centrality of nation-states (Achiume, 2019). As recalled by Achiume (2019), Third World migrants "who seek legal authorization even just to visit the First World are faced with complex and often prohibitively expensive visa restrictions that, notably, do not apply to the international mobility of First World citizens" (p. 1515). What is worse, their lives are jeopardized by militarized border regimes when seeking to migrate to First World countries without legal authorization. In this regard, the Schengen Area has often been criticized for transforming (or perhaps, more correctly, for keeping) the EU into so-called "Fortress Europe", in which the EU's border agency, Frontex, is tasked with defending Europe from the *invasion* of migrants through fences, warships, and a surveillance system of satellites and drones.[13] Furthermore, the use of Western categories, such as the nation-state, in non-Western societies ignores not only the different cultures and the legal pluralism existing in Third World countries but also the fact that environmental disruptions are better framed by the category of 'climate hot spots', which rarely correspond to political borders (Giorgi, 2006; Kent & Behrman, 2018).

The use of Western categories at the expense of others leads us to the coloniality of knowledge. This manifests through the power of the most relevant policymaking actors likely to influence the terminology and working definitions in use. Recent studies show how key policymakers' influence has determined a substantial shift of nomenclature toward the realm of displacement (Nash, 2019; Rosignoli, 2022). Accordingly, people

[10] The Schengen Area is considered the world's largest visa-free zone allowing EU citizens only (with the sole exception of non-EU nationals living in the EU or visiting the EU as tourists, exchange students, or for business purposes) to travel, live, and work in any EU country without being subjected to border checks or particular formalities.

[11] The term "Third World" is used here to refer to the territories and populations colonized by Europeans between the mid-18th and 20th centuries (Cf Achiume, 2019, p. 1513).

[12] See Directive (EU) 2021/1883 para 40: "a Member State should be able to check whether a vacancy which an applicant for an EU Blue Card intends to fill could instead be filled from the national or Union workforce, or by third-country nationals who are already lawfully resident in that Member State and who already form part of its labour market by virtue of Union or national law, or by EU long term residents wishing to move to that Member State for highly qualified employment in accordance with Chapter III of Council Directive 2003/109/EC."

[13] Regarding border militarization in the Global North, cf. Parenti (2011), who coined the term "armed lifeboat", referring to rich countries using their privileges to protect their own elites while shutting out "climate refugees."

fleeing in the context of climate change and environmental degradation are mostly considered displaced people, while the label "climate refugees"[14] is strongly opposed in some academic and policymaking circles.[15] Both groups make arguments that this label has no legal basis, as the 1951 Geneva Convention's definition of a refugee does not include people on the move in the context of environmental disruptions; using this label might be misleading and must be avoided so as not to create misunderstandings. As mentioned above, this position has also been confirmed by the 2018 Global Compacts, which established that only refugees, as defined by the 1951 Geneva Convention, are entitled to specific international protection. It follows that the Western definition of a refugee is the only one with universal validity regardless of scholars' efforts and recent developments to address its narrow wording and the changed geopolitical and geohistorical conditions.[16] In the context of climate change and ecological disasters, rejecting the geopolitical era of the Cold War seems essential. When environmental conflicts are becoming more central than armed conflicts, then it is reasonable to suggest that we are facing a new geopolitical context marked by "cold and hot wars" (Lee, 2009, 2020, p. 144).[17]

The persistence of such a geopolitically outdated perspective first emerges from the dogmatic defense of the sole definition of a refugee by the 1951 Geneva Convention, thus preventing the coexistence of competing definitions. As recalled by Behrman and Kent (2018), Gerrit Jan van Heuven Goedhart, the first UN High Commissioner for Refugees, strongly opposed the proliferation of other refugee definitions for the sake of ensuring the uniform protection of refugees, equal support, and levels of assistance provided. However, this position resulted in a hierarchical understanding of a refugee, thereby excluding other sources of knowledge and protection; that is, all people on the move who do not fall under the 1951 Geneva Convention's definition (i.e., *de facto* refugees) are left without protection. Furthermore, the outdated Cold War perspective emerges from the state-centric dominant narrative of a refugee as a 'problem to be solved' or as a burden to be equally shared. The question of whether this centrality of states could have made sense in the geopolitical context of the Cold War (i.e., a world with borders apparently frozen) does not seem valid today in a world ever more dominated by cross-border environmental conflicts. Ultimately, the coloniality of knowledge prevents the construction of a new subjectivity at the source. Such epistemological violence occurs by impeding the formation of a specific, distinct subjectivity with its own definition and legal status.

In turn, this epistemological violence aimed at conserving the superiority of Western knowledge over non-Western one leads us to the coloniality of being. This form of coloniality manifests in mechanisms of objectification for jettisoning human beings (mostly vulnerable groups) and their human rights from the debate (Nash, 2019; Rosignoli, 2022). Left without rights and protection, people on the move in the context of environmental disruptions are classified as irregular migrants, often end up in immigration detention camps, and are more likely to suffer gender-based violence (Betts, 2010, 2016). As a result, they lack access to international protection and basic services (e.g., healthcare, education, and work), as they risk either being sent back to their home countries or experiencing protracted refugee-like situations before resettlement. In other words, they are dehumanized and treated as objects rather than subjects with rights and duties. Adopting a decolonial EJ approach may help to reposition the debate about climate refugees within human rights instead

[14] For a comprehensive overview of existing terms and definitions referring to this emerging category of refugees, see also Rosignoli (2022, Chapter 1).

[15] Within academic discussions, the exceptions are Behrman and Kent (2018), Biermann (2018), Kent and Behrman (2022), and Rosignoli (2022). Legally speaking, adopting the term "displaced persons" in place of "refugees" makes a huge difference, as displaced people have fewer rights than refugees. International law recognizes a specific status for refugees and a set of rights, such as the right to be resettled and receive international protection, while displaced persons do not have the same recognition. The term has merely a descriptive meaning as included in a soft law instrument—the 1988 United Nations High Commissioner for Refugees (UNHCR) *Guiding Principles on Internal Displacement*. This means that states are not legally bound to protect displaced persons. By contrast, providing assistance, aid, and protection to refugees is a legal requirement established by a legally binding treaty, such as the 1951 Geneva Convention.

[16] I developed this issue in Rosignoli (2022, Chapter 4). Cf. also the special issue *From climate migration to Anthropocene mobilities: Shifting the debate* (Baldwin, Fröhlich, & Rothe, 2019).

[17] Tragically, such a perspective is still relevant in the context of the Russia–Ukraine war, which scholars and media have described as a revival of great-power competition between Russia and the US over Eastern Europe.

of the overly narrow focus on physical phenomena dominating the public discourse on climate-induced migration in the second place (Nash, 2019). The next paragraph will examine how a decolonial EJ approach may contribute to overcoming the colonial impasse that surrounds the figure of climate refugees.

4. Decolonizing refugeehood

Adopting a decolonial EJ approach implies starting from two essential premises. First, the current geopolitical scenario is increasingly dominated by environmental conflicts in climate hot spots, often going beyond political borders. Second, the current trend reported by the IDMC shows that internal displacements by disasters totaled to 32.6 million people compared to 28.3 million people due to conflicts, with disasters responsible for triggering more than 50% of those recorded worldwide in 2022 and with weather-related events, such as floods, storms, and droughts, causing more than 98% of disaster displacements (IDMC, 2023). The trend is shifting slightly in favor of internal displacement by disasters rather than by conflicts. Because the resulting migration is a structural phenomenon, it urges the adoption of a legal instrument for recognizing/protecting the rights of environmentally displaced people/climate-induced migrants, and a policy response indicating the subjects who should tackle this emerging policymaking area.

In light of these two premises, I argue that a decolonization of refugeehood is needed. To achieve this goal, I propose

(1) development of a broader interpretation of the current legal definition of a refugee, and
(2) a shift in the unit of responsibility for tackling this phenomenon from states to nonstate actors.

More specifically, I propose the development of an extensive interpretation by analogy using the concept of vulnerability. This concept has repeatedly become the focus of legal debates, especially in the field of human rights law (Fineman & Grear, 2013; Morawa, 2003). It has been used as a technical term to identify certain individuals/groups deprived of their human rights, and as a qualifying factor with significant relevance in the context of human rights litigation (Morawa, 2003). However, its concrete use in the context of climate-induced migration has only recently been acknowledged by the 2018 Global Compact for Safe, Orderly and Regular Migration, particularly Objective 7 (l), which addresses migration vulnerabilities. Although not legally binding, it ensures that national policies and programs are oriented toward the needs of "migrants in situations of vulnerability" (UN Office of the High Commissioner for Human Rights; Global Migration Group, 2018, p. 60), as defined by the recommendations of the Global Migration Group and the UN Office of the High Commissioner for Human Rights. More specifically, it refers to the Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations.(UN Office of the High Commissioner for Human Rights; Global Migration Group, 2018). This document has further specified that vulnerable situations are also associated with reasons for leaving the country of origin, including climate change and environmental degradation, and may sometimes give rise to refugee protection needs in some circumstances, as some migrants might be unable or unwilling to return to their countries of origin. In light of this, both climate and political refugees may find themselves in the same vulnerable situations, as their fundamental human rights are at risk upon returning to their home countries.

In this view, the concept of vulnerability offers the *ratio legis* establishing why these cases are relevantly similar and ought to be treated alike, regardless of the reasons why these individuals leave their home countries (e.g., persecution, war, and natural disasters). Such a broader interpretation allows us to recognize and include *other* misrecognized figures of refugees, such as climate and economic refugees, without creating any hierarchy in power, knowledge, or being. Indeed, both Western and non-Western understandings of refugeehood would be equally represented and protected through this broader interpretation. Furthermore, this interpretation helps

avoid empirical difficulties in distinguishing between climate and political refugees.[18] Empirical research on the climate–migration nexus has shown that migration is a multicausal phenomenon, so isolating the sole environmental factor among the many elements that trigger migrations is very difficult (Foresight, 2011).

The emphasis on the concept of vulnerability leads us to the second point of my argument—an alternative approach rooted in the concept of vulnerability has the potential to better address the distinct situations of different groups and individuals whose human rights have been violated. The main reason is that this shifts the focus from the agents of persecution to the victims of human rights violations. Such a new perspective invites us to pose the following questions: As the weakness in international legislation implies that no international institution has the explicit mandate to provide international protection and humanitarian assistance to these people, how can such an institutional gap be filled? Which actors are better equipped to govern such a complex policymaking area, which is at the intersection between climate change and migration governance, while taking care of the victims of human rights violations in the context of climate change/environmental degradation? I argue that nonstate actors might better achieve this goal if they successfully foster their collective capabilities and specific functions and achieve a meaningful diversification of funding to become ever more economically and financially independent.[19]

Unlike states, nonstate actors best suit the current geopolitical context, in which numerous and diffused climate hot spots have replaced the traditional divide between developing and developed states. In this regard, their translocal approaches may further overcome the hierarchical logic employed by states through a dynamic understanding of climate-induced migration beyond national entities, nationalist historiographies, and the Eurocentric view of global history (Greiner & Sakdapolrak, 2013; Verne, 2012). In particular, specific functions and capabilities assigned within the framework of the Paris Agreement make nonstate actors more equipped to deal with translocal climate migration and displacement. Local associations are usually positioned on the frontline of disasters and more often provide the first emergency response and disaster relief. In the aftermath of disasters, nonstate actors might better accommodate different forms of vulnerability at the individual and community levels, implement context-tailored EJ policies for climate refugees, and ultimately facilitate the construction of a new legal subjectivity. In the long term, nonstate actors' actions might be crucial to redesigning more equal relations between citizens, nonstate actors, states, and international government organizations (IGOs) within the hybrid architecture of the Paris Agreement (Bäckstrand, Kuyper, Linnér, & Lövbrand, 2017).[20]

5. Conclusion

The misrecognition of climate refugees represents a case of climate coloniality. The lack of a legal status of this emerging subjectivity is not the result of a legal impasse but is linked to the imposition of Western categories of power, knowledge, and hierarchy of subjectivities that can be framed through the lens of the

[18] By the expression "non-Western understandings of refugeehood", I refer to all proposed definitions for emerging categories of refugees not aligned or that eventually challenge—rather than simply complement—the definition enshrined in the 1951 Geneva Convention. In this regard, UNHCR itself has recognized the existence of 5.2 million "other people in need of international protection". First introduced in mid-2022 reporting, this category includes "people who are outside their country or territory of origin, typically because they have been forcibly displaced across international borders, who have not been reported under other categories (asylum-seekers, refugees, people in refugee-like situations) but who likely need international protection, including protection against forced return, as well as access to basic services on a temporary or longer-term basis" (UNHCR, 2022, p. 4).

[19] For a detailed explanation of how nonstate actors might improve their collective capabilities and specific functions, see Rosignoli (2022, Chapter 5).

[20] The crucial role of nonstate actors in the face of disasters is also recognized by the Sendai Framework for Disaster Risk Reduction 2015–2030. Adopted at the Third UN World Conference in Sendai, Japan, on March 18, 2015, it acknowledges that nonstate actors are enablers in supporting states to implement normative frameworks, standards, and plans for disaster risk reduction at the local, national, regional, and global levels. A particular emphasis is devoted to nonstate actors' specific knowledge, experiences, and resources required for supporting public institutions. Cf. (United Nations International Strategy for Disaster Risk Reduction, 2015, pp. 23-24).

tripartite notion of coloniality advanced by decolonial EJ scholars. This article has proposed the decolonization of refugeehood by providing a broader interpretation of a refugee, on the one hand, and by strengthening the role of nonstate actors, on the other.

An extensive interpretation of a refugee is retrieved by analogy using the concept of vulnerability. In doing this, both climate and political refugees who find themselves in the same vulnerable situations—when their fundamental human rights are at risk upon returning to their home countries—ought to be treated alike. Similarly, the concept of vulnerability might be used to identify the most suitable subjects to meet these vulnerable groups' needs. In this regard, nonstate actors can better achieve this goal, as they operate at the frontline of disasters with a translocal approach that can overcome the hierarchical logic employed by states. After their collective capabilities, specific functions, and funding diversification have been approved, they might help recognize climate refugees and redesign more equal relations between citizens, nonstate actors, states, and IGOs.

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