

## MIGRATION FLOWS AND THE BASIC CATEGORIES OF REFUGEES: THE IMPORTANCE OF INTERNATIONAL LAW PROTECTION<sup>8</sup>

### FLUXOS DE MIGRATÓRIOS E NOVAS CATEGORIAS DE REFÚGIO: A IMPORTÂNCIA DA PROTEÇÃO INTERNACIONAL DOS REFUGIADOS.

*Thiago Giovani Romero<sup>9</sup>; Catharina Libório Ribeiro Simões<sup>10</sup> & Ana Cristina Alves de Paula<sup>11</sup>*

#### ABSTRACT

This article aims to address the new categories of refugees, "economic refugees" and "environmental refugees." It consists in a dialogue search of these new categories about the guardianship system and refugee protection on international level, according to the 1951 Convention of Refugees and the Additional Protocol on the same subject in 1967. It will address the need for refugee legal concept enlargement, viewing new factual and social realities in the economic and climate change. The issue justification is in defining the approach brought by the 1951 Refugee Convention not to be extended to new categories, which are on the margins of

<sup>8</sup> Originally, this article was published to the International Course "Derechos Fundamentales e Innovaciones del Derecho" at Universidad Rey Juan Carlos, Madrid, on December 9-11, 2019. After the discussions at the event, this article underwent changes and more dense inclusions to bring a deeper debate on the topic.

<sup>9</sup> Professor dos cursos de pós-graduação "latu sensu" do Damásio Educacional. Professor do curso de graduação em Direito da Fundação Educacional de Penápolis (FUNPEPE). Pesquisador Sênior no Projeto BRA-10-007: Boas práticas na implementação dos sistemas de informação para a infância e adolescência (PNUD/ONU/MMFDH/UFRJ). Doutorando em Direito Internacional Público na Faculdade de Direito da Universidade de São Paulo (FDUSP). Mestre em Direito pela Universidade Estadual Paulista "Júlio de Mesquita Filho" (UNESP). Especialista em Direito e Processo do Trabalho pelo Damásio Educacional. Especialista em Direito Internacional pela Pontifícia Universidade Católica de São Paulo (PUCSP). Graduado em Direito no Centro Universitário Toledo (UNITOLEDO). Professor Associado no portal Direito Internacional sem Fronteiras (DIsF), sendo integrante da linha de pesquisa "Os direitos da criança no sistema internacional". Pesquisador no Grupo de Pesquisa de Políticas Públicas e Direitos Sociais (UNESP/Franca). Pesquisador no Núcleo de Estudos de Direito Internacional de Ribeirão Preto (NEDIRP/USP-Ribeirão Preto). Foi Professor de Direito do curso de Serviço Jurídico do Centro Paula Souza (2018-2019). Foi Professor Substituto-Bolsista na graduação de Relações Internacionais da UNESP/Franca, na disciplina Regime Internacional de Direitos Humanos (2017). E-mail para contato: thiago.romero@live.com.

<sup>10</sup> Mestranda no Instituto de Relações Internacionais da Universidade de São Paulo (IRI/USP), São Paulo, Brasil. Email: catharinaliborio@usp.br.

<sup>11</sup> Doutoranda em Direito pela Unesp (campus de Franca/SP). Mestre em Direito (2018) pela Unesp (campus de Franca/SP). Especialista em Direito da Seguridade Social (2022) pela Faculdade Legale. Especialista em Direito Tributário (2018) pela PUC Minas (polo de Uberlândia/MG). Bacharel em Direito (2016) pela Unesp (campus de Franca/SP). Licenciada em Letras Português/Francês (2022) pela Unesp (campus de São José do Rio Preto/SP). Professora Tutora de Direito e Processo Previdenciário (Damásio Educacional). Advogada (OAB/SP nº 377.576). Atualmente, possui ênfase nas áreas de Direito Previdenciário, Direito Tributário, Direito Internacional Público e Direito e Literatura. E-mail para contato: acristinaadv@gmail.com.

human rights international protection. It was chosen to work in the construction of a deductive method, through literature review. Therefore, given the growth of migration flows across borders, the economic and “environmental refugees” must have minimum guarantees, supported by the human rights protection system.

**Keywords:** refugees; economic refugees; environmental refugees; human rights.

## RESUMO

Este artigo tem como objetivo abordar as novas categorias de refugiados, “refugiados econômicos” e “refugiados ambientais”. Consiste em uma busca de diálogo dessas novas categorias sobre o sistema de tutela e proteção de refugiados em nível internacional, de acordo com a Convenção de 1951 de Refugiados e Protocolo Adicional sobre o mesmo assunto em 1967. Abordará a necessidade de ampliação do conceito jurídico dos refugiados, contemplando novas realidades sociais e de fato nas mudanças econômicas e climáticas. A justificativa é a definição da abordagem proposta pela Convenção de 1951 sobre os refugiados não estendendo-se a novas categorias, que estão à margem da proteção internacional dos direitos humanos, optou-se por trabalhar na construção de um método dedutivo, através de uma revisão da literatura. Portanto, dado o crescimento dos fluxos migratórios através das fronteiras, estes “novos” grupos de refugiados devem ter garantias mínimas, apoiadas pelo sistema de proteção dos direitos humanos.

**Palavras-chave:** refugiados; refugiados econômicos; refugiados ambientais; direitos humanos.

## INTRODUCTION

In recent years, we are following the issue of human migrations and the discussion of the pertaining international law through international organizations. A particular kind of migration flows is herein dealt with, that spurred by climate change and economic disorder. These people, for international law, cross the borders of their original States seeking new horizons and guarantees, and are called refugees. In its classic concept, refugees are people who flee their homeland because of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.

As already implied, this article aims to address the emergence of new categories of refugees: “the economic and environmental refugees.” This due to the fact that the study of disintegration of countries and economic systems directly caused by climate change became a contemporary theme. It is worth pointing out that the movement of people across borders is a constant in the history of humanity; there

have been reports of individuals who were journeying across States or territories because of various reasons, economic, personal, ideological slant or Security.

Also, it is paramount to point out that refugees are treated as a threat by the internal States policies. However, arguably, those are protected by rights and guarantees inherent to the human condition, that is, the international human rights system urges for their protection.

The issue of the economic and “environmental refugee” is relevant because the classical concept of refugee contemplated by the 1951 Refugee Convention and its Additional Protocol does not address the above-mentioned category of refugees. Therefore, there is a pressing need for these new categories of refugees to be singled out and inserted in the international legal corpus. The rationale for the admission of the category of “environmental refugees” is supported by perceivable climate change, the rampant use of natural resources and, especially, by the first refugee claim formulated to Supreme Court of Justice of New Zealand, pleading the refugee status for a national of Kiribati considering the various climate liabilities of that archipelago, which is believed to have covered by seawater over the next 40 years.

As for the “economic refugees”, they would be those who could, at least in theory, remain in their countries of origin, but, dissatisfied with the local array of economic and/or survival opportunities, move to another region, in search of better life prospects or mere basic means of living (CASELLA, 2001, p. 24).

We are facing a new perspective on refugees on the international stage, where a lacking of definition both conceptual and legal is perceptible. In such perspective, both are necessary: a new cooperative tool which could optimize fundamental rights and positive economic outlooks for populations of countries suffering from major environmental danger and/or economic instability; and optimized humanitarian laws in countries seen as destination for populations in danger due to either climate change or lack of economic opportunities.

In this work, we aim to discuss the classical definition of refugees, and advocate the importance of building a conceptual expansion representing the new categories: economic and “environmental refugees”.

## **THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS**

Evolutionarily, when dealing with human rights protection, we remember the teachings of Hannah Arendt (1979, p. 23), that is to say, that human rights are not a given, but a human invention in a constant process of construction and reconstruction. To the understanding of Arendt, says Ignacy Sachs (1998, p. 156):

Don't insist never enough about the fact that the rise of the rights is the result of fights, which rights are conquered, sometimes with barricades, in a historical process full of vicissitudes, through which the needs and aspirations fit together in claims and banners of fight before being recognized as rights (Author's translation).

There is little doubt about the rise of human rights internationalization, particularly from the end of the World War II, which shaped up the profile of the international protection system. In 1945, the Charter of the United Nations (UN) entered into force, with the idea of a world Government, aiming peace between States and mobilizing the international community to combat non-compliance and to promote human rights (HUSEK, 2010, p. 214).

The UN General Assembly in 1948, has drafted the Universal Declaration of Human Rights, in so doing it introduced a contemporary conception of human rights, coated with features of universality and indivisibility. The advent of the 1948 Declaration defines the beginning of international law on human rights, that is, a process of true universalization for the formation of an international protection system, supported by the United Nations. In this context, the issue of refugees must be addressed subsidiarily to the field of human rights, since there is an interrelation between the right to refuge and the preservation of human life, expressed in the Declaration of 1948 (PIOVESAN, 2001, p. 2).

It is remarkable as well that the system of protection for human rights is affected by international treaties, based on an ethical and security consensus shared by States. Therefore, the increasing participation of States parties in these treaties sets up a degree of alignment for the preservation of human life through human rights (PIOVESAN, 2001, p. 2).

Antônio Augusto Cançado Trindade (1997, p. 36), highlights the problem of monism and dualism, in reason of the participation of States in the common sense of international protection of human rights, which must implement the priority inherent rights of the human person, regardless of the primacy of international law or from any national law:

Unleash us from the bonds of idle old controversy between monistic and dualistic; in this field, it is not a question of primacy of international law or domestic law, here in constant interaction: the primacy is, in this field, the standard that best protects, in each case, the rights of the human person, is it a standard of international law or domestic law (author's translation).

Snapping up what was exposed by Trindade, Piovesan (2001, p. 4) mentions that the "international rights contained in human rights treaties just come to enhance and strengthen, never restrict or undermine, the protection degree of the rights enshrined in the constitutional legal plan" (author's translation).

In this sense it is fair to conclude that international mechanisms for human rights protection require from States parties a redefinition within the concept of citizenship. After all, the State that ratifies an international treaty on human rights should maintain a parallel dialogue with its domestic legislation, in order to prevent contradictions that may harm the fundamental rights and guarantees of its own people, in regard of a better operation of the system of international protection.

On classical doctrine, it is noticeable the existence of three strands which assist the international protection of human rights: Human Rights, Humanitarian Law, and Refugee Law. However, this vision is currently segmented into disuse, as if seeking to extend the warranty standards to ensure the rights inherent to individual humans in all fields (TRINDADE; PEYTRIGNET; SANTIAGO, 1996, p. 30).

When we deal with international refugee law, we note that its goal is to ensure and establish minimum human rights to individuals who go outside their home countries, leaving everything behind, seeking a new social environment (SAADEH; EGUCHI, 1998).

According to Cançado Trindade, Geràld Peytrignet and Jaime Ruiz de Santiago (1996, p. 129), the problem concerning refugees arise because of fundamental human rights violation which should be observed in the whole process of request for asylum or refuge.

International Law is capable of ensuring the protection of human rights, in the internal and global environment, to every human being. In particular, it is remarkable that the security of the refugee law does not apply to all men, since it requires proof of extraordinary circumstances (SAADEH; EGUCHI, 1998).

Therefore, in a contemporary vision, thefor respect human rights and abidance by, humanitarian law and refugee law are fundamental intertwined elements, existing

within the system of international protection, seeking to establish a core guarantor: preservation of human life through ensuring fundamental rights of subsistence. As mentions Cançado Trindade (1997, p. 112, author's translation): "the human being passes to occupy, in our days, the corresponding central position, as both domestic and international law."

Under international law, the Universal Declaration of human rights of 1948, in its article 14 demonstrates the link between the institutes of asylum and refuge in "every person, in case of persecution, has the right to seek and enjoy asylum in another country."

In the refugee shelters who seeks to steal the danger threatening him, who gives only offers the shelter until such a State of danger if not cease providing protection. Another North, the asylum is the protection that is sought to get rid of the pursuit of who has the highest strength, the protector becomes a protector of the refugee to defend him and put him out of the Chase (PLÁCIDO and SILVA, 1984, p. 64-65, author's translation).

However, Article 1 of the 1951 Refugee Convention wedges a more specific definition than that of the Universal Declaration of Human Rights of 1948, targeting a limitation to apply the characteristics of refugees only to the people who fear being persecuted for reasons of race, religion, nationality, social group or political opinion, when outside their country of origin and who cannot or will not avail themselves of the protection of such country. However, after the advent of an international instrument on the issue of refugees, the criticism concerns the time limitation that the Statute provides refugees with effect from January 1, 1951; the protagonists were the people that moved between the borders by force of Second World War (PINTO, 2009).

The 1951 Refugee Convention on the status of refugees, is the Magna Carta to determine the condition of refugees, as well as to understand their rights and obligations, and is in accordance with this Convention which has determined the situation of more than 20 million of people who currently have the condition of refugees in the world (TRINDADE; PEYTRIGNET; SANTIAGO, 1996, author's translation).

As mentioned above, the definition laid down by the 1951 Refugee Convention presented in addition to the temporal limitation, a geographical limitation, namely, it was supposedly restricted only to the context of recent events in Europe, post Second World War.

Regarding the temporal limitation, we note that a change happened with the ratification and introduction of the Additional Protocol of 1967 relating to the status of refugees, which adjourned its use on the new population movements between countries. According to Pinto (2009), in 1960, there was a sharp growth in the flows of people, of which the of the process of decolonization of the African continent is an example, and this being the kickoff for the perception by the international community of its inability to understand that these people were then in need for international protection.

It appears that the members of these migration flow, to be supported by other countries, needed to meet the requirements imposed by the legal framework on refugees, according to article 1 of the Geneva Convention of 1951 (2001, p. 17-26). However, the new categories of economic and environmental refugees are not contemplated by this procedure, hence the importance of a broadening of the concept of refugee, so that these new categories of refugees have their fundamental rights guaranteed through a legal instrument (status of refugees and the additional protocol).

A broader view of the concepts brought by leading qualifications regarding refugees, the Geneva Convention of 1951 and Additional Protocol it becomes indisputable, in the face of climatic factors, and the phenomenon of economic globalization.

In this segment, we check the relevance of defending an extension of concepts on the basis of the Organization of African Unity Convention of 1969 and the Cartagena Declaration of 1984, which added in their legal text other forms of persecution, such as: external aggression, occupation, foreign domination and events seriously disturbing public order (PINTO, 2009). For further clarification, let us take head of the Cartagena Declaration on refugees of 1984, in its third conclusion, determining:

Third-reiterate that, in the light of the experience gained by the mass influx of refugees in Central America, taking necessary to face the extent of refugee concept taking into account, in that it is pertinent, and according to the characteristics of the situation existing in the region, as provided for in the OAU Convention (article 1, paragraph 2) and the doctrine used in the reports of the Inter-American Commission of human rights. Thus, the definition or the refugee concept recommended for your use in the region is that, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, consider also as refugees people who have fled their countries because your life, safety or freedom have been threatened by generalized

violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order (UNHCR, 1984, author's translation).

On this same note, the Organization of African Unity Convention of 1969, in its article 1, expands on a broad definition of the named refugees:

Article 1: definition of the term Refugee: 1-for the purposes of this Convention, the term refugee applies to any person who, fearing with good reason, be pursued because of your race, religion, nationality, membership in a particular social group or their opinions policies, is outside the country of your nationality and cannot, or as a result of that fear, you don't want to require the protection of that country; or, if you have no nationality and are outside the country of previous usual residence your after those events, or, because of that fear, you don't want to go back. 2-the refugee term also applies to any person who, due to aggression, foreign occupation, foreign domination or events seriously disturbing public order in part or in full from your country of origin or of the country of nationality, is compelled to leave the place of habitual residence to seek refuge in another place outside your country of origin or nationality (UNHCR, 1984).

We have seen that the Cartagena Declaration and the Convention of the Organization of African Unity are pioneers on minimum rights to those who leave their home countries in search of a better life. These instruments are proof that recognition of new categories of refugees must not be merely founded on fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, as has the 1951 Refugee Convention and its additional protocol.

## THE “ECONOMIC REFUGEES”

The migratory flow of people across borders is common place at various times in history and are thus caused by a variety of factor, such as economic necessity, flight from armed conflicts, or even by persecution due to ideology (SOUSA; BENTO, 2013, p. 25).

Nowadays, it is difficult to differentiate the *status* of refugees and that of economic migrants, due to a general perception that there might be various violations to third generation rights, such as economic, social and cultural rights. It is known that these rights were long considered by States and international actors as mere aspirations and not human rights in their own right, according Liliana Jubilut and Silvia Apolynário (2010, p. 288).



For sure, before the growth of these new flows of migrants in search for guarantee of fundamental rights, the status of Refugees of 1951, brings in article 1 the definition of who is considered a refugee.

According to Sousa and Bento (2013, p. 14), this definition given by article 1 of the Refugee Status is not able to fit in the new categories of people who leave their home countries, since this of concept covers strictly those who in fear of persecution for reasons of race, religion, nationality, social group or political opinions, not covering other motivations related directly to issues involving human rights of third generation, such as economic rights, access to health, water and education, to name a few.

In this line of thought, it is clear the conceptualization of refugees calls for new categories, especially those herein named "environmental refugees" and "economic refugees."

The "economic refugees," according to the definition of Paulo Borba Cosella (2001, p. 24, author's translation) is any one who "sees himself faced with the total impossibility to satisfy its needs in the country which is vital. Paradoxically, the economic drive for a better life is what prods the economic refugee to leave their homeland, where they lack possibilities to exert such drive and are then thus driven out, searching for new economic spaces that might grant better opportunities to such economic drive thwarted by their origin country situation.

Liliana Jubilut and Silvia Apolynário (2010, p. 289, author's translation) indicate elements which are defining about the *status* of refugee, aimed at verifying and certifying whether a person displaced by economic issues could turn to refuge or another mode of protection:

When considering the need for a founded fear of persecution for the characterization of the status of refugee, the motivation arises from a violation of economic, social and cultural rights is more complicated, because the violation of these rights occurs more from neglect than through a formal act or concerted actions of a stalker. Besides, almost always it is difficult to separate the individual situation of the general terms and conditions in your country of origin or habitual residence. However, there are cases where there is an intersection between the fact of belonging to a social group and access to education and health. However, in these cases, the persecution can be characterized by belonging to a social group.

Thus, reasons abound to the recognition of "economic refugees" as such, as individuals deprived of economic and social rights, human rights thesaurus, who has

a right to accede better life standard and guarantees. Liliana Jubilut and Silvia Apolynário (2010, p. 289) point out that the deprivation of the right to work, the right to education and the right to health can be providing criteria for the recognition of refugee status.

We conclude that the Refugee Convention does not support its crisp text in new categories of people, but that arguably need the international protection of their fundamental rights, as their countries of origin do not provide decent conditions subsist. Soon, these people except through the help of other countries in the implementation of human rights, which are the protagonists.

## **THE “ENVIRONMENTAL REFUGEES”**

The terminology employed in the present article, "environmental refugee" appeared in 1970, through research developed by Lester Brown, a researcher at the Worldwatch Institute. In this study, the clipping was researched on the growing increase in migration driven by climatic factors (or environmental) as desertification, shortage of water resources and environmental pollution in excess (CLARO, 2011, p. 244). In this study, Lester Brown releases an alarming warning to the international community, claiming that shortly, the populations of island countries could be forced to leave their homes, their countries due to sea level rise.

According to Marilu Dicher (2013, p. 2) a definition about who are the “environmental refugees” is a complex task, since it is important to settle the circumstances for which these people should be framed in this category, enabling the processes of identification and classification.

In this respect, the concept coined by Essam El-Hinnawi (1985, author's translation) states that environmental refugees are:

People who run away or leave your homeland as a function of life and security threats caused by environment, among them any physical, chemical and biological changes in the ecosystems or directly on natural resources that transform making an improper environment to maintain or reproduce human life.

The emergency of this category of refugees was affected due to drastic changes in the environment balance, it is since essential to the recognition and justification of causes for this type of migratory flow, which has been classified in

three modes: natural, unnatural and provoked by person (SOUZA; MARQUES, 2013, p. 21).

Talking about natural disturbances, the same authors (2013, p. 32) portray that those are the ones which can cause changes, even if temporarily, the ecosystem in an inappropriate place, affecting the sustenance of human life. Regarding the unnatural environmental disorder those are events that occur in their usual way, but whose effects are exacerbated by human intervention in the most diverse ecosystems (JACOBSON, 1998, p. 16). The disturbance caused by person consists in events that can be assigned exclusively to the activity of mankind on the planet (SOUZA; MARQUES, 2013, p. 26).

As briefly exposed, a significant group of scholars and researchers on the theme fans in favor of the recognition of the new category of "environmental refugee," even though the definition of such category moves away from the refugee definition lists in the 1951 Refugee Convention and its additional protocol of 1967, which founds the conceptualization of refugees on fears of persecution, inherent in the classical definition, associated with a pursuit is held by a State agent or a dominant regional group, under the definition employed by the African Union.

In this sense, there is no way to frame the terminology "environmental refugee" directly within the classical category, namely, protective instruments of international law in force, due to the absence of elements: founded fear of persecution; extraterritoriality (offset within the borders of the refugee's country), and the single factor, that of a person person who needs protection.

The acceptance of the nomenclature "environmental refugees" by the international community is still shy, the subject has great social, political and economic value though, since for example, the International Organization for Estimated Migrations, in the year of 2009, avows that number of "refugees" for environmental *status* could reach around 200 million to 1 billion people in 2050 (IOM, 2009, p. 5)."

In the year 2013, a citizen of Kiribati wishing to move to New Zealand, distributed a lawsuit requesting refuge to the New Zealand Court, grounding his plead on his condition of "environmental refugee." New Zealand Court's response was to deny the request, justifying that there is no prevision in the international and national legal system for environmental refugee (DONNER, 2014, p. 334).

The case of Kiribati became an international landmark, specifically for demonstrating a tendency in the judiciary system of countries concerning recognition of the category of "environmental refugees". Thus, even with the denial of the plead, this request drew the attention of the media and international public opinion, causing the States and its authorities to consider positioning themselves about what happened in this case and its offshoots.

In recent years Kiribati has been suffering from constant flooding, which forced its inhabitants to relocate to the main island of the archipelago, which soon settled a crisis of overpopulation, leading to the potable water pollution, reduction of quality of life and health, as well as a downsizing in the life expectancy of the population. Associated with this problem, the population of Kiribati began to live with the possibility of being forced to leave their homes due to the rising of sea level and increasing environmental degradation (GORAL, 2014, p. 14).

Therefore, the inhabitants of the islands of Kiribati are possible examples, real ones that migrants could be considered "environmental refugees", since they seek in other territories environmental safety and improvement in quality of life.

As already mentioned, the concept of "environmental refugees" must be extended to contemplate new migratory movements, in particular those on account of climate change, which has caused significant impacts around the World (PINTO, 2009, p. 12). Moreover, the same impairment occurs about the classification of the "economic refugees", namely, that the classical concept of refugee demands expansion, in view of the growing number of refugees who leave their countries of origin because of natural tragedies in search of rights assurance and guarantees, including the right to material survival and economic opportunity.

## CONCLUSION

This article aims to bring the relevance on recognition of new refugee categories: economic and "environmental refugees." This is because the definition expressed in the legal framework on refugees states only about forced migratory flow between the borders, per criterion of persecution.

To treat the theme of migration, within the limits of this research, it became clear that these were influenced by economic and environmental factors, generating debate about the expansion of the legal concept of refugee, i.e., spend to adopt a

definition of the legal categories of "economic refugees" and "environmental refugees" and protection by international law.

It is known that the Institute's study of refuge became essential to demonstrate the evolution on the displacement of population throughout the history of humanity, as well as, questioning what the next steps that this Institute could trace to, effectively, continue to guarantee rights are. Remembering that the concept of the refuge has suffered over the years three magnifications. The first of them, initially, brought the international coding about who would be considered refugees, it was Europeans who were fleeing their countries of origin during the second world war, because they were being persecuted on account of their religion, race, nationality, political opinions and even, belonging to social groups. Then, the additional 1967 Protocol removed the temporal and regional Convention but promoted the maintenance of the characteristics concerning the allocation of refugee status. In a third moment, for compliance and concern of some regional organizations, there was an adaptation to the classic concept of the refuge, that because of the reality experienced by the world, but you can tell that this expansion has a range regional purposes and not always had reception.

In this context, the so-called "economic refugees" and "environmental refugees" hardly will fall in the traditional definition, which no longer represents the confines of what occurred post World War II, and other international measures for its protection, that is, an extension of the classical concept of the Institute of the refuge.

The new categories deserve highlight, as the new flows are results of the rampant use of natural resources and climatic conditions, as well as the lack of economic support in the countries. To achieve the extension of the concept of refugee, it is necessary to balance the legislation with the current reality of migration flows. Therefore, the *status* of economic and "environmental refugees," arguably, deserves to be included in the Statute, in order to attend minimum rights inherent to man, as he preaches the international system of protection of the rights humans.

It can be seen that the Geneva Convention should have a new additional protocol, covering economic and "environmental refugees," aimed at providing an international recognition of support and solidarity. In other words, it is necessary a legal recognition of the current situation of these people, so they are considered refugees by international law.

If this is not the international trend, broaden the definition of the Institute of refuge or develop a new additional protocol, suggested another way reach existing regulatory gaps about the recognition of refugee status to displaced people for economic and environmental reasons, the use of soft law instruments.

These instruments, which are more flexible and can be created in a short time, by specialists and experts in the area, can act as guiding principles and guarantors of rights to subject moving, due to economic factors and climate. Therefore, the adoption of the soft law, would make the approaches to recognition of categories, "economic refugees" and "environmental refugees," had greater adherence to international level, subsequently, align the countries on the inclusion internal legislation. Maybe, the significant problem of soft law instruments, which even though legal standard status, represent a moral obligation for international relations.

It is concluded that the use of hard law instruments to expand the concept of refuge or create an additional protocol, or soft law instruments, shows that international law must address and solve the current problems, aiming at the full and broad protection of human rights.

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