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**The (in)applicability of
the statute of refugees to
environmentally displaced
persons**

**A (in)aplicabilidade do estatuto
dos refugiados para os
deslocados ambientais**

Maria Cláudia da Silva
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The (in)applicability of the statute of refugees to environmentally displaced persons

A (in)aplicabilidade do estatuto dos refugiados para os deslocados ambientais*

Maria Cláudia da Silva Antunes de Souza**

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ABSTRACT

The increasingly frequent occurrence of environmental disasters and natural resources degradation jeopardize the quality of life of humankind and, in some cases, prevents people from remaining in their places of origin. The context of the present article is the crescent concern with people that abandon their homes, motivated by environmental changes that render the place they live inadequate for human survival. In this sense, the article has the objective to verify if and under which circumstances the global Refugee protection system is applied to Environmentally Displaced Persons, filling the absence of rules regulating their situation and ensuring their Fundamental Rights. Accordingly, it is highlighted the necessity to build a specific protection system to Environmentally Displaced Persons that guarantees an effective protection to people in that condition.

Keywords: Refugee. Environmentally displaced person. Environmentally persecuted person. Environmental refugee. Environmental persecution.

RESUMO

A ocorrência cada vez mais frequente de desastres ambientais e de degradação dos recursos naturais compromete a qualidade de vida do homem e, em alguns casos, inviabiliza a permanência em seus locais de origem. O presente artigo tem como contexto a crescente preocupação com as pessoas que abandonam seus lares, motivadas por mudanças ambientais que tornam o meio em que habitam impróprio para a sobrevivência humana. Nessa esteira, objetiva-se verificar se e em que circunstâncias o sistema global de proteção dos Refugiados aplica-se aos Deslocados Ambientais, suprimindo a ausência de normas que instituem seu estatuto e assegurem a proteção de seus Direitos Fundamentais. Nesse sentido, destaca-se a necessidade de se construir um sistema de proteção específico para os Deslocados Ambientais, que garanta uma efetiva proteção às pessoas que se encontram nessa condição.

Palavras-chave: Refugiado. Deslocado ambiental. Refugiado ambiental. Perseguição ambiental.

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1. INTRODUCTION

The alarming increase in environmental disasters and environmental resources degradation generates a deep concern in the global scenario¹. There are more than 33 million refugees, refugee requesters, internally displaced persons and other persons who have abandoned their home, risking their own lives, freedom and security, in the attempt to flee from Persecution for reasons relating to race, religion, nationality, membership of a particular social group or political opinion. To these persons the international community recognizes the statute of Refugee. It lends them assistance and it gives them asylum, all through the actions of the UNHCR and according to the rules of the 1951 Convention Relating to the Statute of Refugees (hereinafter only the 1951 Convention or the Refugee Convention) and its 1967 Protocol Relating to the Statute of Refugees (henceforth only the 1967 Protocol of the Refugee Protocol).

However, that number does not show other millions of individuals who also need to abandon their homes and risk their own lives, freedom and security, motivated by environmental changes that render their habitat completely unsuitable for human survival. These individuals, so called Environmentally Displaced Persons, do not have, as the Refugees do, a legal statute of their own and thus they suffer without an effective and directed action from the international community to ensure their fundamental rights. As it is spotlighted by the preamble of the Convention Project Relating to the International Statute of Environmentally Displaced Persons, from the Centre de Recherche Interdisciplinaire en Droit de l'Environnement, de l'Aménagement de de l'Urbanisme (CRIDEAU):

[...] regardless the various international instruments aiming to protect the environment, there is not, in the current state of international law applicable to refugees, any specific instrument that provides for the situation of the ensemble of environmentally displaced persons and that can be applicable and invoked in their favour.²

The present article has the analysis of a new category — the Environmentally Displaced Persons — as its object and it seeks as objective to verify if (and under which circumstances) the Refugee Convention and Protocol may be applied to these so called Environmentally Displaced Persons, filling in the absence of norms instituting a statute of their own and protecting their fundamental rights. In this sense, it is highlighted the need to build a specific protection system to Environmentally Displaced Persons, guaranteeing an effective protection to persons in such situation.

In the phases of investigation, data handling and composition of the research final report, it was adopted an inductive methodological posture. The category technique and the operational definition technique were operated in order to define clearly the terms used in this article as well as to establish the connections between them. The bibliographical research was duly directed by the referent technique and the data was registered using the record card technique³. To compose this article, it was used the model proposed by Cesar Luiz Pasold for scientific articles⁴.

The article is organized as follows: first, it is presented the regime adopted by de 1951 Convention for Refugees, highlighting the operational definition⁵ of that

www.observatorioeco.com.br/wp-content/uploads/up/2010/09/projet-de-convention-relative-au-statut-international-des-dap-lacas-environnementaux2.pdf>. Access on: 11 apr. 2012, 14:31. Pré-ambule. Translation by the authors of the article. Original text in French: [...] malgré les nombreux instruments internationaux visant à protéger l'environnement, il n'existe, dans l'état actuel du droit international applicable aux réfugiés, aucun instrument spécifique prévoyant la situation d'ensemble des déplacés environnementaux et pouvant être appliqué et invoqué en leur faveur.

3 About the category technique, v. PASOLD, Cesar Luiz. *Metodologia da pesquisa jurídica: teoria e prática*. 11. ed. rev. e atual. Florianópolis: Conceito Editorial; Millennium, 2008. p. 25-35. About the operational definition technique, v. p. 37-52. About the referent technique, v. p. 53-62. About the record card technique, as well as its use with the referent technique, v. p. 107-123.

4 PASOLD, Cesar Luiz. *Metodologia da pesquisa jurídica: teoria e prática*. 11. ed. rev. e atual. Florianópolis: Conceito Editorial; Millennium, 2008. p. 160-162.

5 When we establish or propose one meaning to a word or expression, wishing that such meaning will be accepted to the effects of the ideas we support, we are fixing an Operational Definition [...]. (everything bold in the original). PASOLD, Cesar Luiz. *Metodologia da pesquisa jurídica: teoria e prática*. 11. ed. rev. e atual. Florianópolis: Conceito Editorial; Millennium, 2008. p. 37. Translation by the authors of the article. Original text in Portuguese: Quando nós estabelecemos ou propomos uma definição para uma palavra ou expressão, com o desejo de que tal definição seja aceita para os efeitos das idéias que expomos, estamos fixando um Conceito Operacional [...].

1 33.924.476. This is the number of people under the responsibility of the United Nations High Commissioner for Refugees (UNHCR). UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES – UNHCR. *official data*. available at: <<http://www.acnur.org/t3/portugues/recursos/estatisticas/>>. Access on: 02 may 2012.

2 PRIEUR, Michel et. al. *Projet de convention relative au statut international des déplacés environnementaux*. *Revue Européenne du Droit de L'Environnement*, n. 4, 2008, p. 381-393. Available at: <[SOUZA, Maria Cláudia da Silva Antunes de; PRADO, Lucas de Melo. The \(in\)applicability of the statute of refugees to environmentally displaced persons. *Revista de Direito Internacional, Brasília*, v. 10, n. 2, 2013 p.196-210](http://</p></div><div data-bbox=)

category⁶ and the criteria for the acknowledgement of the Refugee quality. Then, it is approached the matter of Environmentally Displaced Persons, defining this category and examining the complexity of phenomena included in such category. Finally, it is faced the matter of the possibility or impossibility of application of the 1951 Convention to Environmentally Displaced Persons.

To the central categories of this article, the following operational definitions are adopted:

Refugee: any 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 [...], is unable or, owing to such fear, is unwilling to return to it.⁷

Persecution: harmful action, or threat of such an action, perpetrated against a person or a group of persons, based on who that person is — race, nationality or membership of a particular social group — or what he or she believes — religion or political opinion.

International Migration: displacement of an individual (or a group of individuals) that leaves the country of his/her nationality or where he/she possessed habitual residence and settles himself/herself in another country.

Environmentally Displaced Persons:

[...] 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 [sic].⁸

Environmental Disruption: “[...] any physical, chemical, and/or biological changes in the ecosystem (or resource base) that render it, temporarily or permanently, unsuitable to support human life”.⁹

Environmental Persecution: the use of Environmental Disruptions to harm a person or a group of persons based on who the person is — race, nationality or membership of a particular social group — or what he or she believes — religion or political opinion.

Environmentally Displaced Person *Stricto Sensu*: the person that is forced to leave his or her traditional *habitat*, migrating internally or internationally, temporarily or permanently, due to a specific Environmental Disruption (natural and/or anthropogenic) that compromises his/her existence and/or seriously affects his/her quality of life, without configuring Environmental Persecution.

Environmentally Persecuted Person: the person who, owing to well-founded fear of Environmental Persecution that compromises his/her existence and/or seriously affects his/her quality of life, is forced to leave his/her traditional *habitat*, temporarily or permanently.

Environmental Refugee: any person who, owing to well-founded fear of Environmental Persecution that compromises his/her existence and/or seriously affects his/her quality of life, is forced to leave his/her country of nationality, temporarily or permanently, and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country; or who, not having a nationality and being outside the country of his/her former habitual residence is unable or, owing to such fear, is unwilling to return to it.

2. WHO IS REFUGEE?

According to the UNHCR, in the end of 2010, the world had more than 10 million Refugees¹⁰. No wonder

6 Category is “[...] the word or expression that is strategic to the elaboration and/or expression of an idea”. (everything bold in the original). PASOLD, Cesar Luiz. *Metodologia da pesquisa jurídica: teoria e prática*. 11. ed. rev. e atual. Florianópolis: Conceito Editorial; Millennium, 2008. p. 25. Translation by the authors of the article. Original text in Portuguese: Categoria é “[...] a palavra ou expressão estratégica à elaboração e/ou expressão de uma idéia”.

7 UNITED NATIONS. *Convention relating to the statute of refugees*. Available at: <<http://www.unhcr.org/3b66c2aa10.html>>. Access on: 12 apr. 2012. Art. 1-A(2).

8 EL-HINNAWI, Essam apud BATES, Diane C. Environmental refugees? Classifying human migrations caused by environmental change. *Population and Environment*, v. 23, n. 5, p. 465-477, may 2002. Available at: <<http://home.student.uu.se/h/heax7669/>

Samh%E4llets%20Geografi/Artiklar/Bates.pdf>. Access on: 17 apr. 2012. p. 466.

9 EL-HINNAWI, Essam apud BATES, Diane C. Environmental refugees? Classifying human migrations caused by environmental change. *Population and Environment*. v. 23, n. 5, p. 465-477, may 2002. Available at: <<http://home.student.uu.se/h/heax7669/Samh%E4llets%20Geografi/Artiklar/Bates.pdf>>. Access on: 17 apr. 2012. p. 466.

10 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES – UNHCR. Official data by UNHCR. Available at:

Earl Huyck and Leon Bouvier stated that “[...] today one may point almost anywhere on a spinning globe and put a finger on a refugee situation”¹¹

Even though the existence of Refugees goes back to biblical eras — think of the exodus of slaves from Egypt, under Moses leadership, in search of the Promised Land —, the international community demonstrated any concern about the matter only after the World War I, with the creation of the League of Nations. Without ever defining the category Refugee, the League acted pragmatically and episodically, protecting specific groups through the development of empirical institutional mechanisms, whose extension depended on political considerations and humanitarian empathy.¹²

Only after the World War II the international protection of Refugees gains general character, based on two fundamental aspects, as José Henrique Fischel de Andrade highlights: an institutional one, “[...] materialized in the establishment of organizations that intend to assist and protect refugees [...]”¹³; as well as a juridical one, “[...] which happens through the composition of conventional, extraconventional and domestic instruments that give the meaning of the term ‘refugee’ and define the juridical statute of their beneficiaries”¹⁴. Today, the institutional aspect is represented by the UNHCR, whilst the juridical aspect is materialized in the 1951 Convention and the 1967 Protocol.

<<http://www.acnur.org/t3/portugues/recursos/estatisticas/>>. Access on: 02 may 2012.

11 HUYCK, Earl E.; BOUVIER, Leon F. *apud* CASELLA, Paulo Borba. Refugiados. *Revista de Informação Legislativa*, Brasília, v. 21, n. 84, p. 251-260, out./dez. 1984. Available at: <<http://www2.senado.gov.br/bdsf/item/id/181584>>. Access on: 27 apr. 2012. p. 260.

12 ANDRADE, José Henrique Fischel de. Breve reconstituição histórica da tradição que culminou na proteção internacional dos refugiados. In: ARAUJO, Nadia de. ALMEIDA, Guilherme Assis de (Coord.). *O direito internacional dos refugiados: uma perspectiva brasileira*. Rio de Janeiro: Renovar, 2001. p. 120-121.

13 ANDRADE, José Henrique Fischel de. Breve reconstituição histórica da tradição que culminou na proteção internacional dos refugiados. In: ARAUJO, Nadia de. ALMEIDA, Guilherme Assis de (Coord.). *O direito internacional dos refugiados*. Rio de Janeiro: Renovar, 2001. p. 99. Translation by the authors of the article. Original text in Portuguese: “[...] materializada no estabelecimento de organizações que têm como escopo a assistência e a proteção dos refugiados [...]”.

14 ANDRADE, José Henrique Fischel de. Breve reconstituição histórica da tradição que culminou na proteção internacional dos refugiados. In: ARAUJO, Nadia de. ALMEIDA, Guilherme Assis de (Coord.). *O direito internacional dos refugiados*. Rio de Janeiro: Renovar, 2001. p. 99-100. Translation by the authors of the article. Original text in Portuguese: “[...] que ocorre por meio da redação de instrumentos convencionais, extraconvencionais e domésticos, os quais conceituam o termo ‘refugiado’ e definem o estatuto jurídico de seus beneficiários”.

As the juridical base of Refugees’ global protection, the 1951 Convention brings the great contribution of offering an operational definition to the category. Such definition is decisive to mark the contractual or convention obligations of the signatory States of that instrument, once it contains the essential elements that characterize a Refugee¹⁵. *Ipsis litteris*, the Convention asserts:

For the purposes of the present Convention, the term “**refugee**” shall apply to any person who: [...] As a result of events occurring before 1 January 1951 and 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.¹⁶

When it was signed in 1951, the Convention established two restrictions: a temporal one, which made the characterization of Refugees depend on events prior to 1st January 1951, and a geographic one, which limited the characterization of Refugees to events that had taken place in the European continent¹⁷. Nevertheless, both these restrictions were lifted by the 1967 Protocol, which states:

For the purpose of the present Protocol, the term “refugee” shall [...] mean any person within the definition of article 1 of the Convention as if the words “As a result of events occurring before 1 January 1951 and ...” “and the words”... “a result of such events”, in article 1 A (2) were omitted.

The present Protocol shall be applied by the States Parties hereto without any geographic limitation [...]”¹⁸

Thus, without the temporal and geographic restrictions, the definition of the 1951 Convention, which is also adopted by the present article, imposes three conditions to the characterizations of a Refugee situation: 1) the well-founded fear of Persecution; 2) the Interna-

15 CASELLA, Paulo Borba. Refugiados. *Revista de Informação Legislativa*, Brasília, v. 21, n. 84, p. 251-260, out./dez. 1984. Available at: <<http://www2.senado.gov.br/bdsf/item/id/181584>>. Access on: 27 apr. 2012. p. 253.

16 UNITED NATIONS. *Convention relating to the statute of refugees*. Art. 1-A(2). No bold in the original text.

17 UNITED NATIONS. *Convention relating to the statute of refugees*. Art. 1-B(1).

18 UNITED NATIONS. *Protocol relating to the statute of refugees*. Available at: <<http://www.unhcr.org/3b66c2aa10.html>>. Access on: 12 apr. 2012. Art. 1(2) e (3).

tional Migration; and 3) the absence of protection from the country of origin.

The well-founded fear of Persecution is “the crucial criterion to define a refugee [...]”¹⁹. Nonetheless, there is neither a generally accepted definition for Persecution nor a uniform interpretation of the term. The recognition of the statute of Refugees is a task to be performed by each State²⁰, in the moment when they decide about the concession of territorial asylum²¹. Besides that, the definition does not demand the actual Persecution, but the well-founded fear of Persecution, which implies the presence of a subjective element inherent in the refugee seeker²². Still, the operational definition of the category “Persecution” is essential for this article. It is a *sine qua non* condition to the recognition of the Refugee situation under the rules of the 1951 Convention and, therefore, it will be used in the analysis of the applicability (or inapplicability) of the global Refugee protection system to the case of Environmentally Displaced Persons (*n.* item 3).

The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951

19 CASELLA, Paulo Borba. Refugiados: conceito e extensão. In: ARAUJO, Nadia de. ALMEIDA, Guilherme Assis de (Coord.). *O direito internacional dos refugiados: uma perspectiva brasileira*. Rio de Janeiro: Renovar, 2001. p. 20. Translation by the authors of the article. Original text in Portuguese: “[o] critério crucial para conceituar um refugiado [...]”.

20 TRINDADE, Antonio Augusto Cançado. A Proteção dos Refugiados em Seus Aspectos Jurídicos: a Convenção de Genebra de 1951 Relativa ao Estatuto do Refugiado e a Questão do Levantamento pelo Brasil da Reserva Geográfica. In: MEDEIROS, Antonio Paulo Cachapuz (Org.). *Pareceres dos consultores jurídicos do Itamaraty*. Brasília: Conselho Editorial do Senado Federal, 2004. v. 8. p. 293-315. (Coleção Brasil 500 Anos). Available at: <<http://www.dominiopublico.gov.br/download/texto/sf000066.pdf>>. Access on: 27 apr. 2012. p. 302.

21 When a State receives a Refugee in its territory, it grants him/her territorial asylum. The territorial asylum should not be confused with the political or diplomatic asylum, “[...] which is granted to persecuted persons for political reasons and is granted in ‘legações, warships, military airplanes and military camps’.” MELLO, Celso Duvivier de Albuquerque. *Direito constitucional internacional*. 2. ed. rev. Rio de Janeiro: Renovar, 2000. p. 161. Translation by the authors of the article. Original text in Portuguese: “[...] que é concedido a perseguidos por motivos políticos e que é concedido nas ‘legações, navios de guerra, aeronaves militares e acampamentos militares’.”

22 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. Geneva, 1992. Available at: <<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3314>>. Access on: 04 may 2012. Paragraphs 37-50.

Convention and the 1967 Protocol relating to the Status of Refugees (henceforth only the UNHCR Handbook) offers an indication of what Persecution might be:

From Article 33 of the 1951 Convention, it may be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. Other serious violations of human rights – for the same reasons – would also constitute persecution.

Whether other prejudicial actions or threats would amount to persecution will depend on the circumstances of each case [...].²³

The 1993 UNHCR Report is also helpful for the understanding of the category Persecution. Approaching the displacement dynamics and the main causes for Refugee fluxes, the Report remarks that: “The 1951 Convention identified what is still a major root cause of refugee flows: persecution based on who the refugee is (race, nationality, membership of a particular social group) or what he or she believes (religion or political opinion).”²⁴

In view of both the UNHCR Handbook and the 1993 Report, the following operational definition of Persecution is proposed, in order to make that category an instrument of analysis for this article, with no intention to build a universally accepted definition though. Thus, **Persecution** is considered as the harmful action, or threat of such an action, perpetrated against a person or a group of persons, based on who that person is — race, nationality or membership of a particular social group — or what he or she believes — religion or political opinion.

The second condition imposed by 1951 Convention to the recognition of the Refugee situation requests that the individual is already outside the country of their nationality, i.e. it must have happened an **International Migration**, understood here as the displacement of an individual (or a group of individuals) that leaves the country of his/her nationality or where he/she possesses

23 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. Paragraphs 51-52.

24 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. *The state of the world's refugees 1993: the challenge of protection*. Gênova: United Nations High Commissioner for Refugees, 1993. Especificamente: chap. 1. The dynamics of displacement. Available at: <<http://www.unhcr.org/3eeddcf7a.html>>. Access on: 18 apr. 2012.

ses habitual residence and settles himself/herself in another country. As a consequence, internal migrants, who leave their residence and move somewhere else inside their own country, even when victims of Persecution, are not considered Refugees. In respect to this, the 1993 UNHCR Report: “The situations that produce refugees also produce other forms of displacement, including people who have not crossed an international border but face the same fears and dangers as refugees.”²⁵

The third condition set by the 1951 Convention determines that the country of the Refugee’s nationality (or where he or she keeps his/her habitual residence) does not grant him/her the due protection against the suffered Persecution or the Refugee is unwilling, owing to the fear of Persecution, to avail himself/herself of the protection of his/her country. This means that the State where the Refugee is from is always involved with the Persecution situation that generated the migratory flux, either because 1) the State where the Refugee is from is the agent of the Persecution; or 2) the State where the Refugee is from is not the agent of the Persecution, but it does not take the necessary measures to make the Persecution cease. In both cases, the person is unable to avail himself/herself of the protection of his/her own country and ends up seeking asylum beyond borders. This “abandonment” is what originates the situations provided by the other two conditions: as one cannot trust one’s own State, one is filled by well-founded fear of Persecution and one leaves one’s home, migrating internationally, in order to defend one’s life, freedom and security through the refuge in another country. For that reason, Flávia Piovesan asserts that “each refugee is a consequence of a State that violates Human Rights”²⁶.

With the reunion of these three conditions (fear of Persecution, International Migration and absence of protection from the country of origin), the situation of Refugee is configured and must be recognized by the States of the international community²⁷, especially the

signatories of the 1951 Convention and its 1967 Protocol. That is precisely the orientation of the UNHCR Handbook:

A person is a refugee within the meaning of the 1951 Convention as soon as he fulfills the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee.²⁸

The 1951 Convention and the 1967 Protocol are not the only instruments that contain an operational definition for the category “Refugee”. At least two other documents address this matter and set definitions for the category even larger than the ones set by the 1951 Convention. Such documents are the Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (1969) and the Cartagena Declaration (1984). According to Flávia Piovesan, both instruments, besides adopting the definition from the 1951 Convention, “[...] prescribe the massive violation of human rights as a characteristic refugee situation”²⁹.

to asylum, i.e. the State, in the exercise of the right of sovereignty, has the right to refuse it”. SILVA, Geraldo Eulálio do Nascimento e. Os refugiados políticos e o asilo territorial. In: ARAUJO, Nadia de. ALMEIDA, Guilherme Assis de (Coord.). *O direito internacional dos refugiados: uma perspectiva brasileira*. Rio de Janeiro: Renovar, 2001. p. 13 e 14. Translations by the authors of the article. Original texts in Portuguese, respectively: “[...] a concessão do asilo é um direito do Estado baseado em sua soberania” and “[...] não existe um direito ao asilo, ou seja o Estado, no exercício de seu direito de soberania, tem o direito de recusá-lo”. On the other hand, Flávia Piovesan sustains that the *non refoulement* principle, by which it is prohibited to return the Refugee to the country where his/her life and freedom are threatened, must be recognized and respected by all the international community, for it is a principle of *jus cogens*. PIOVESAN, Flávia. O direito de asilo e a proteção internacional dos refugiados. In: ARAUJO, Nadia de. ALMEIDA, Guilherme Assis de (Coord.). *O direito internacional dos refugiados*. p. 47-48.

28 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. *Handbook on procedures and criteria for determining refugee status under the 1951 convention and the 1967 protocol relating to the status of refugees*. Paragraph 28.

29 PIOVESAN, Flávia. O direito de asilo e a proteção internacional dos refugiados. In: ARAUJO, Nadia de. ALMEIDA, Guilherme Assis de (Coord.). *O direito internacional dos refugiados: uma perspectiva brasileira*. Rio de Janeiro: Renovar, 2001. p. 13 e 14. p. 36. Translation by the authors of the article. Original text in Portuguese: “[...] prevêm a violação maciça dos direitos humanos como caracterizadora da situação de refugiado”. The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, after adopting the same definition of Refugee of the 1951 Convention, extends such definition to include also “[...] every person who, owing to external aggression, occupation, foreign domination or events

25 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. *The state of the world's refugees 1993*.

26 PIOVESAN, Flávia. O direito de asilo e a proteção internacional dos refugiados. In: ARAUJO, Nadia de. ALMEIDA, Guilherme Assis de (Coord.). *O direito internacional dos refugiados: uma perspectiva brasileira*. Rio de Janeiro: Renovar, 2001. p. 38. Translation by the authors of the article. Original text in Portuguese: “cada refugiado é consequência de um Estado que viola os Direitos Humanos”.

27 Granting territorial asylum to a Refugee is an act of sovereignty and, thus, it is not mandatory to the State. As Geraldo Eulálio do Nascimento e Silva reminds, “[...] granting asylum is a right of the State based on its sovereignty”. And he adds: “[...] there is no right

However, both the OAU Convention and the Cartagena Declaration are regional instruments, applicable only to Africa and Latin America, respectively. For that reason, the enlargements in the definition of Refugee contained in those instruments are not adopted by this article, which proposes, as already said before, to analyze the global Refugee protection system in order to verify the possibility of its application to cases implicating Environmentally Displaced Persons. Therefore, the present article sticks to the definition of the 1951 Convention and the conditions therein imposed for Refugee characterization.

3. ENVIRONMENTALLY DISPLACED PERSONS

In 1985, Essam El-Hinnawi, a researcher for the United Nations Environment Programme (UNEP), used for the first time the term Environmental Refugee, defining it 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 [sic]. By “**environmental disruption**” in this definition is meant any physical, chemical, and/or biological changes in the ecosystem (or resource base) that render it, temporarily or permanently, unsuitable to support human life.³⁰

seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality”. ORGANIZATION OF AFRICAN UNITY. *Convention governing the specific aspects of refugee problems in Africa*. Adis-Abeba, 10 Sept. 1969. Available at: <http://www.au.int/en/sites/default/files/Convention_En_Refugee_Problems_in_Africa_AddisAbaba_10September1969_0.pdf>. Access on: 04 May 2012. Art. 1(2). In addition, the Cartagena Declaration recommends that the definition of Refugee, for use in Latin America, should include, besides the cases covered by the 1951 Convention, those cases of “[...] persons who have fled their country because their lives, 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”. COLOQUIO SOBRE LA PROTECCIÓN INTERNACIONAL DE LOS REFUGIADOS EN AMÉRICA CENTRAL, MÉXICO Y PANAMÁ. *Cartagena declaration on refugees*. Cartagena, 22 nov. 1984. Available at: <<http://www.asylumlaw.org/docs/international/CentralAmerica.PDF>>. Access on: 04 may 2012. Third Conclusion.

30 EL-HINNAWI, Essam apud BATES, Diane C. Environmental refugees? Classifying human migrations caused by environmental change. *Population and Environment*. p. 466. No bolds in the original text.

Even though it has been widely used in the last 25 years, the term Environmental Refugee does not seem appropriate to characterize the situation described by El-Hinnawi³¹. The reason for that takes into account what has been explained in the previous item of this article. When one talks about Refugees one is talking about a series of criteria (fear of Persecution, International Migration and absence of protection from the country of origin) that is not evident in the definition proposed above. *Ergo*, Liliana Jubilit and Silvia Apolinário assert that “[f]rom the point of view of international law, the expression *environmental refugees* is not correct, because the definition given to the word *refugee* by international law includes specific criteria which make a person be granted refuge protection”³².

On account of that, in this article, Essam El-Hinnawi’s operational definition is not used to define the category Environmental Refugee, but to define the category **Environmentally Displaced Persons**, which is more appropriate to the described phenomenon. The term “Displaced” reflects: the plurality of causes of environmental displacements; the not only personal, but also collective characteristic of population movements; as well as the idea that it is not a voluntary migration or a migration motivated by economic needs, but a migration imposed by an ineluctable environmental threat³³. Julien Bétaille sustains:

We have chosen here the term environmentally displaced persons for two main reasons. First, the term “refugee” recalls the 1951 Geneva Convention, whose text is not adapted to the reality of the phenomenon studied here. Second, the adverb “environmentally” allows including, at the same time, the displacements connected not only

31 “The expression ‘environmental refugees’, though widely used for the past twenty years, is mistakenly applied.” LOPEZ, Aurelie. The protection of environmentally-displaced persons in international law. *Environmental Law*, Portland, v. 36, n. 2, p. 365-409, 2007. Available at: <<http://clawreview.org/2007/10/the-protection-of-environmentally-displaced-persons-in-international-law/>>. Access on: 11 apr. 2012. I. Introduction.

32 JUBILUT, Liliana Lyra; APOLINÁRIO, Silvia Menicucci. O. S. A necessidade de proteção internacional no âmbito da migração. *Revista Direito GV*, São Paulo, v. 6, n. 1, p. 275-294, jan./june 2010. Available at: <<http://www.scielo.br/pdf/rdgv/v6n1/13.pdf>>. Access on: 11 Apr. 2012. p. 288. Italics in the original text.

33 LAVIEILLE, Jean-Marc; BÉTAILLE, Julien; MARGUÉNAUD, Jean-Pierre. Rapport explicatif du projet de convention relative au statut international des déplacés environnementaux. *Revue de droit de l’Université de Sherbrooke*, p. 454-463, sept. 2008. Available at: <http://www.usherbrooke.ca/droit/fileadmin/sites/droit/documents/RDUS/volume_39/39-12-convention.pdf>. Access on: 11 may 2012. p. 462.

to climate changes, but also to other natural or technological catastrophes. In addition, those terms translate in a better way the idea of an imposed migration, rather than a chosen one.³⁴

Thus, the category Environmentally Displaced Persons is used here to describe the person or group of persons that is forced to leave the place he/she lives due to an Environmental Disruption. Such phenomenon is one of the most relevant challenges of contemporary international Society³⁵. For an idea of environmental displacements' scale, one should remember Norman Myers estimates. According to Myers, in 1997 there were at least 25 million Environmentally Displaced Persons in the world, located mainly in Sub-Saharan Africa, the Indian sub-continent, China, Mexico and Central America. That is equivalent to say that, in 1997, to each 225 persons, at least one of them could be characterized as an Environmentally Displaced Person. Still in accordance with Myers, the environmental displacement matter promises to rank as one of the foremost human crises of our times³⁶. Jodi Jacobson attests that Environmentally Displaced Persons “[...] have become the single lar-

gest class of displaced persons in the world [...]”³⁷.

Through Diane C. Bates' classification of Environmentally Displaced Persons³⁸ it is possible to have a glimpse of the complexity of these migrations motivated by environmental changes. As reported by Bates, those migration fluxes are born of three different kinds of environmental changes: disasters, expropriations and deteriorations.

The first of these kinds of environmental changes (the disasters) are “[a]cute disruptions in the environment that cause unplanned human migration [...]”³⁹. The environmental disasters can be divided in natural events (volcanic eruptions, hurricanes, earthquakes) and technological accidents (Chernobyl, in 1986; Fukushima, in 2011).

The expropriations (the second kind of environmental changes that cause migration fluxes) include “[...] the permanent displacement of people whose habitat is appropriated for land use incompatible with their continued residence”⁴⁰. The expropriations are consequences of development (flooded areas for building a dam, urban expansion in natives' territory) or war (ecocide, understood as “[...] the intentional destruction of human environments in order to strategically relocate a target population during a period of war”⁴¹).

Finally, the deteriorations (third kind of environmental changes mentioned by Bates) are gradual envi-

34 BÉTAILLE, Julien. Les déplacements environnementaux: um défi pour le droit international. *L'encyclopédie du développement durable*. Available at: <<http://encyclopedie-dd.org/encyclopedie/territoires/3-0-demographie/les-deplacements-environnementaux.html>>. Access on: 12 apr. 2012. Introduction. Translation by the authors of the article. Original text in French: “Nous choisissons ici le terme de déplacés environnementaux, ce pour deux raisons principales. La première est que le terme ‘réfugié’ renvoie à la Convention de Genève de 1951 et que ce texte n’est pas adapté à la réalité du phénomène ici étudié. La seconde est que l’adjectif ‘environnementaux’ permet d’englober à la fois les déplacements liés au changement climatique mais aussi à d’autres catastrophes naturelles ou technologiques. De plus, ces termes traduisent mieux l’idée selon laquelle la migration est subie et non choisie.”

35 The term Society is used with capital S for the following reason: “[...] if the Category **STATE** deserves to be written with capital S, the category **SOCIETY** deserves even more to be written with capital S, because, after all, SOCIETY is the creator and maintainer of State! Thus, for coherence, if the creature/maintained one (State) is written with capital S, the creator/maintainer (Society) should also be written with capital S! PASOLD, Cesar Luiz. *Metodologia da pesquisa jurídica*. p. 169. Bolds and underlines in the original text.. Original text in Portuguese: “[...] se a Categoria **ESTADO** merece ser grafada com a letra E em maiúscula, muito mais merece a Categoria **SOCIEDADE** ser grafada com a letra S em maiúscula, porque, afinal, a SOCIEDADE é a criadora e mantenedora do Estado! Por coerência, pois, se a criatura/mantida (Estado) vem grafada com E maiúsculo, também e principalmente a criadora/mantenedora (Sociedade) deve ser grafada com o S maiúsculo!”

36 MYERS, Norman. Environmental refugees. *Population and Environment. A Journal of Interdisciplinary Studies*, v. 19, n. 2, nov. 1997. Available at: <<http://www.springerlink.com/content/j436x24814660277/fulltext.pdf>>. Access on: 16 apr. 2012. p. 167-168-175.

37 JACOBSON, Jodi apud LONERGAN, Steve. The role of environmental degradation in population displacement. *Environmental Change and Security Project Report*, n. 4, p. 5-15, 1998. Available at: <<http://www.wilsoncenter.org/sites/default/files/ACF1493.pdf>>. Access on: 17 apr. 2012. p. 8.

38 BATES, Diane C. Environmental refugees? Classifying human migrations caused by environmental change. *Population and Environment*, v. 23, n. 5, p. 465-477, may 2002. Available at: <<http://home.student.uu.se/h/heax7669/Samh%E4llets%20Geografi/Artiklar/Bates.pdf>>. Access on: 17 apr. 2012. p. 469-475.

39 BATES, Diane C. Environmental refugees? Classifying human migrations caused by environmental change. *Population and Environment*, v. 23, n. 5, p. 465-477, may 2002. Available at: <<http://home.student.uu.se/h/heax7669/Samh%E4llets%20Geografi/Artiklar/Bates.pdf>>. Access on: 17 apr. 2012. p. 469.

40 BATES, Diane C. Environmental refugees? Classifying human migrations caused by environmental change. *Population and Environment*, v. 23, n. 5, p. 465-477, may 2002. Available at: <<http://home.student.uu.se/h/heax7669/Samh%E4llets%20Geografi/Artiklar/Bates.pdf>>. Access on: 17 apr. 2012. p. 471-472.

41 BATES, Diane C. Environmental refugees? Classifying human migrations caused by environmental change. *Population and Environment*, v. 23, n. 5, p. 465-477, may 2002. Available at: <<http://home.student.uu.se/h/heax7669/Samh%E4llets%20Geografi/Artiklar/Bates.pdf>>. Access on: 17 apr. 2012.. p. 472.

ronmental changes of human origin, caused by pollution (“[...] the release of toxic substances into the environment that gradually impairs human health or the ability of residents to sustain their quality of life”⁴² — e.g. global warming) or depletion (“[...] the gradual removal of some part of the ecosystem”⁴³ — e.g. deforestation).

See Table 1 - Classification of Environmentally Displaced Persons

Diane Bates’ classification allows perceiving the great complexity of the category “Environmentally Displaced Persons”. Among natural and anthropogenic causes as well as intentional and unintentional ones, permanent and temporary displacements as well as acute and gradual ones, the category “Environmentally Displaced Persons” includes a wide range of situations with their own characteristics, their own causes and their own consequences.

As a result, the multiple aspects of this complex phenomenon cannot be ignored in pursuing the objective initially proposed in this article. The verification of applicability of global Refugee protection system to Environmentally Displaced Persons must necessarily consider the plurality of this phenomenon. Such is the analysis made in the next item.

4. THE GLOBAL REFUGEE PROTECTION SYSTEM AND THE ENVIRONMENTALLY DISPLACED PERSONS

To verify the applicability of the 1951 Convention to Environmentally Displaced Persons one must analyze the compatibility between the Environmentally Displaced Persons’ situation and the criteria for Refugee recognition as presented in the first part of this article. However, as it has been concluded above, the studied phenomenon is complex, for it includes an extensive range of situations. In order to systematize those different situations in a useful way to achieve the objective

42 BATES, Diane C. Environmental refugees? Classifying human migrations caused by environmental change. *Population and Environment*, v. 23, n. 5, p. 465-477, may 2002. Available at: <<http://home.student.uu.se/h/heax7669/Samh%E4llets%20Geografi/Artiklar/Bates.pdf>>. Access on: 17 apr. 2012. p. 474.

43 BATES, Diane C. Environmental refugees? Classifying human migrations caused by environmental change. *Population and Environment*, v. 23, n. 5, p. 465-477, may 2002. Available at: <<http://home.student.uu.se/h/heax7669/Samh%E4llets%20Geografi/Artiklar/Bates.pdf>>. Access on: 17 apr. 2012. p. 474.

initially established by this article, it is proposed to consider the category “Environmentally Displaced Persons” a genus under which is possible to find at least two species: the Environmentally Persecuted Persons and the Environmentally Displaced Persons *Stricto Sensu*.

The difference between Environmentally Persecuted Persons and Environmentally Displaced Persons *Stricto Sensu* is in the presence or absence of the fear of Environmental Persecution. An Environmental Persecution happens when Environmental Disruptions are used as means or strategy of Persecution against an individual or a group of individuals. About that, the 1993 UNHCR Report states: “Occasionally, the destruction of a habitat takes on the character of persecution – for example if it occurs as a result of deliberate governmental action or gross negligence and no effort is made to compensate or assist the people affected.”⁴⁴

Therefore, on account of the operational definition proposed to the category “Persecution”, it is possible to define **Environmental Persecution** as the use of Environmental Disruptions to harm a person or a group of persons based on who the person is — race, nationality or membership of a particular social group — or what he or she believes — religion or political opinion. The Environmental Persecution can be active or passive. In Active Environmental Persecution the Environmental Disruption is caused directly by the agent of the Persecution, aiming to harm and/or cause the displacement of victims. Passive Environmental Persecution happens when, in face of a natural disaster or an environmental accident, the competent authorities to assist the victims (usually the State) do not assist them for reasons relating to who those persons are or what they believe.

In this contexts, and keeping in mind the Essam El-Hinnawi’s definition adopted here to the genus Environmentally Displaced Persons, the category “**Environmentally Persecuted Person**” is defined as that person who, owing to well-founded fear of Environmental Persecution that compromises their existence and/or seriously affects their quality of life, is forced to leave their traditional *habitat*, temporarily or permanently.

And if the Environmental Persecution is the differentiating factor between Environmentally Persecuted Person and **Environmentally Displaced Person**

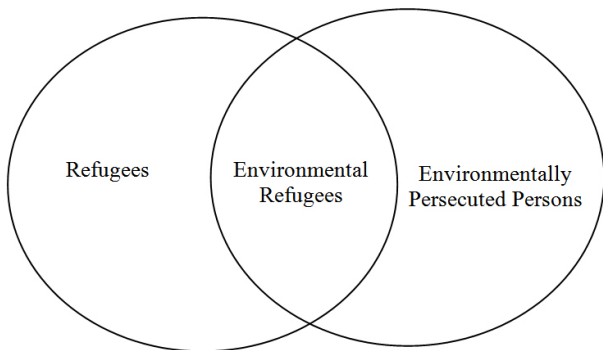
44 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. *The state of the world’s refugees 1993*.

Stricto Sensu, then this last one can be defined as the person that is forced to leave his/her traditional *habitat*, migrating internally or internationally, temporarily or permanently, due to a specific Environmental Disruption (natural and/or anthropogenic) that compromises his/her existence and/or seriously affects his/her quality of life, without configuring Environmental Persecution.

Nonetheless, it is not enough to classify Environmentally Displaced Persons in Environmentally Persecuted Persons and Environmentally Displaced Persons *Stricto Sensu*. Among the Environmentally Persecuted Persons, one must distinguish those persons who migrate internally from those who migrate internationally. Persons who migrate internationally, motivated by well-founded fear of Environmental Persecution, not benefiting from their country protection and not being able to go back to it, are called Environmental Refugees.

It is important to highlight that the category “Environmental Refugee” is used here with a completely different meaning from that which was given to it by Essam El-Hinnawi. Environmental Refugees make a very special class of Environmentally Displaced Persons. They combine every criterion to be recognized, at the same time, as Refugees under the rule of the 1951 Convention and as Environmentally Persecuted Persons — a species of the genus Environmentally Displaced Persons, according to the remarks above. Graphically, Environmental Refugees can be represented by the overlapping area of two intersecting circles:

Figure 1 – Environmental Refugees



Source: Graphic created by the authors of this article

Consequently, the most appropriate definition to the category “Environmental Refugee” is a fusion between the definitions of Refugee and Environmentally Persecuted Person. As a result, **Environmental Refugee** is understood in this article as any person who, owing to

well-founded fear of Environmental Persecution that compromises their existence and/or seriously affects their quality of life, is forced to leave their country of nationality, temporarily or permanently, and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country; or who, not having a nationality and being outside the country of his/her former habitual residence is unable or, owing to such fear, is unwilling to return to it.

Classifying Environmentally Displaced Persons in Environmentally Displaced Persons *Stricto Sensu*, Environmentally Persecuted Persons and Environmental Refugees allows a much clearer perception of the subject relating to the applicability of the global Refugee protection system. The 1951 Convention and the 1967 Protocol can be applied to Environmentally Displaced Persons, but not in every situation. The authority of the Convention and its Protocol is conditioned to the verification of all three criteria to the recognition of a Refugee situation: well-founded fear of Persecution, International Migration and absence of protection from the country of the Refugee’s origin. Consequently, the Convention and the Protocol apply only to that species of Environmentally Displaced Persons that fulfill those three criteria, i.e., to the Environmental Refugees. They apply neither to other Environmentally Persecuted Persons nor to Environmentally Displaced Persons *Stricto Sensu*.

An example of Environmental Refugees, to whom the 1951 Convention and the 1967 Protocol apply, are the Salvadorans who were targeted by Environmental Persecution during the civil war of El Salvador in the 1980s. The US-backed Salvadoran government, in an attempt on weakening the forces of the indigenous guerrilla organized by the Farabundo Martí National Liberation Front, used napalm and other defoliants to destroy large amounts of forests and crops, devastating more than 95% of the country’s tropical deciduous forests and causing the displacement of more than a fifth of its population to neighbor nations.⁴⁵ In other words, Salvadoran government itself, in a Persecution motivated by political reasons, generated Environmental Disruptions to harm a certain group of people, who had

45 GLASSMAN, Jim. Counter-insurgency, ecocide and the production of refugees: warfare as a tool of modernization. *Refuge: Canada’s Periodical on Refugees*, v. 12, n. 1, p. 27-30, June 1992. Available at: <<http://pi.library.yorku.ca/ojs/index.php/refuge/article/view-File/21645/20318>>. Access on: 27 oct. 2013.

to move beyond national borders and couldn't go back to their own country. In this specific case, it is clear the fusion between the elements of the definition of Environmentally Displaced Persons and Refugees and the consequent conformation to Environmental Refugees situation, which allows the application of the global Refugee protection system.

Nevertheless, the same line of thought isn't applied to the Environmentally Persecuted Persons in the Vietnam War, when a similar strategy of environmental destruction with the use of defoliants was employed by the US-backed Vietnamese government in an effort to cause the displacement of the rural population from South Vietnam to the urban areas of the country.⁴⁶ Although environmentally persecuted for political reason, those Vietnamese citizens couldn't be protected by the legal instruments of the global protection system because they hadn't crossed national borders and thus they hadn't met the necessary criteria to be considered Refugees.

A congenerous problem is faced by the Environmentally Displaced Persons *Stricto Sensu* whose Fundamental Rights are threatened by reasons of displacements motivated by natural disasters and other kinds of Environmental Disruptions, even though they are not targeted by any kind of Persecution. That is the case of Brazilians who face the drought in the northeast, of people hit by the Nargis hurricane in Myanmar, of Africans who need to face desertification in sub-Saharan regions, of Eskimos communities who must deal with melting glaciers in the North Pole and of so many other groups that are forced to leave their traditional habitats because of environmental alterations.

Thus far, the global Refugee protection system can be used to guarantee the fundamental rights of a very specific group of Environmentally Displaced Persons (the Environmental Refugees), however, it is not enough to deal with the growing number of persons who migrate internally and internationally, motivated by Environmental Disruptions, but not consumed by the fear of Environmental Persecution. Once they abandon their homes, these human beings are submitted to the most degrading conditions, witnessing the violation of

46 GLASSMAN, Jim. Counter-insurgency, ecocide and the production of refugees: warfare as a tool of modernization. *Refuge: Canada's Periodical on Refugees*, v. 12, n. 1, p. 27-30, June 1992. Available at: <<http://pi.library.yorku.ca/ojs/index.php/refuge/article/view-File/21645/20318>>. Access on: 27 Oct. 2013.

their fundamental rights, including their rights to life, to freedom, to not suffer torture, to privacy, to familiar life, to not suffer arbitrary exile etc.⁴⁷

All these rights are embodied in an extensive hall of international treaties: in the Universal Declaration of Human Rights (1948); in the International Covenant on Civil and Political Rights (1966); in the International Covenant on Economic, Social and Cultural Rights (1966); in the Convention on the Prevention and Punishment of the Crime of Genocide (1948); in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); in the Convention on the Elimination of All Forms of Racial Discrimination (1965); in the Convention on the Rights of the Child (1989); and in the other instruments that comprise the International Human Rights Law.

That is why Érika Pires Ramos alerts that the normative void relating to the Environmentally Displaced Persons' situation "[...] is not consistent with the current stage of developments in International Law, especially with the international protection of the human person — understood broadly —, in which the environmental dimension is inserted [...]"⁴⁸.

Along these lines, the protection of Environmentally Displaced Persons' fundamental rights depends inexorably on the international recognition of their own legal statute. In this topic, Michel Prieur's contribution is invaluable. Alongside a group of eight experts in the theme⁴⁹ and with the patronage of CRIDEAU, he has written the Convention Project Relating to the International Statute of Environmentally Displaced Persons⁵⁰.

47 PIOVESAN, Flávia. O direito de asilo e a proteção internacional dos refugiados. In: ARAUJO, Nadia de. ALMEIDA, Guilherme Assis de (Coord.). *O direito internacional dos refugiados: uma perspectiva brasileira*. Rio de Janeiro: Renovar, 2001. p. 30. The author's comment is about Refugees, but is perfectly adequate to the Environmentally Displaced Persons' situation.

48 RAMOS, Érika Pires. *Refugiados ambientais: em busca de reconhecimento pelo direito internacional*. 2011. 150 f. Tese (Doutorado)—Faculdade de Direito, Universidade de São Paulo, São Paulo, 2011. p. 112. Translation by the authors of the article. Original text in Portuguese: "[...] não se coaduna com o atual estágio de evolução do próprio Direito Internacional, especialmente com a proteção internacional da pessoa humana — entendida de forma ampla —, na qual se insere a dimensão ambiental [...]"

49 Jean-Pierre Marguenaud, Gérard Monédiaire, Julien Betaille, Bernard Drobenko, Jean-Jacques Gouguet, Jean-Marc Lavieille, Séverine Nadaud e Damien Roets.

50 PRIEUR, Michel et. al. Projet de convention relative au statut international des déplacés environnementaux. *Revue Européenne du Droit de L'Environnement*.

The document has a definition and a classification of Environmentally Displaced Persons and embodies the principles and rights that must be guaranteed to them. It also provides for the creation of a specialized Agency to deal with migration fluxes of Environmentally Displaced Persons. This enterprise is an initial effort to recognize the problem and implement solutions. And as Jean Lambert declares: “By recognizing environmental refugees you recognize the problem. By recognizing the problem you start on the road to accepting responsibility and implementing solutions.”⁵¹

5. FINAL CONSIDERATIONS

The problem of Environmentally Displaced Persons is already one of the most relevant challenges of contemporary international Society. This global and extremely complex phenomenon is yet to be properly handled by the legal community in the international sphere. As a result, millions of persons witness the violation of their fundamental rights with no access to any international institution capable of guaranteeing the enforcement of the rules embodied in the 1948 Universal Declaration of Human Rights and in the International Human Rights Law, developed from such Declaration.

The complexity of the theme demands a particular treatment for the categories “Refugee” and “Environmentally Displaced Person”, especially because International Law does not provide for a legal differentiation between them, even though they are related to completely different situations.

The subject has been gaining international repercussion, notably in regions particularly vulnerable to environmental disasters that cause population displacements. In these areas, individuals or groups of individuals abandon temporarily or permanently their homes pressed by environmental problems.

A new category arises: the Environmentally Displaced Person. With no explicit mention in the 1951 Convention, this new category has been the subject of a lot of international discussion.

In order to fulfill a normative gap, this article tried to verify the possibility to apply the global Refugee protection system to cases relating to Environmentally Displaced Persons. To do so, it was first analyzed the criteria imposed by the 1951 Convention and its 1967 Protocol to characterize a Refugee situation. From the definition of the category “Refugee”, it was possible to identify three different conditions to the recognition of the Refugee quality: the well-founded fear of Persecution, the International Migration and the absence of protection from the country of the Refugee’s origin.

After that, the phenomenon of Environmentally Displaced Persons was portrayed in its complexity, demonstrating the plurality of situations that fit in such category.

In view of that plurality, Environmentally Displaced Persons were classified in two species: Environmentally Persecuted Persons and Environmentally Displaced Persons *Stricto Sensu*. Among Environmentally Persecuted Persons, it was distinguished a specific group of persons that were able to cross their country borders, migrating internationally. Those persons were named Environmental Refugees.

This classification has allowed a compatibility judgment between the various types of Environmentally Displaced Persons and the characterization criteria for the category “Refugee”, imposed by the global Refugee protection system. As a result, it was concluded that the Refugee Convention and Protocol could only be applied to that very specific class of Environmental Refugees, because it is the only type of Environmentally Displaced Persons in which is possible to verify the well-founded fear of Persecution (in the form of Environmental Persecution), the International Migration and the absence of protection from the country of origin. The other Environmentally Persecuted Persons and the Environmentally Displaced Persons *Stricto Sensu* still have no legal statute and no globally enforceable international instrument capable to materialize to these vulnerable groups the guarantees of International Human Rights Law.

Therefore, it is urgent the need to create a globally enforceable international instrument providing for Environmentally Displaced Persons’ legal statute, recognizing and guaranteeing their fundamental rights, including via the foundation of a specific protection institution or agency. In that sense, it is praiseworthy the initiative of

51 LAMBERT, Jean apud RAMOS, Érika Pires. *Refugiados ambientais: em busca de reconhecimento pelo direito internacional*. 2011. 150 f. Tese (Doutorado)—Faculdade de Direito, Universidade de São Paulo, São Paulo, 2011. f. 5.

Michel Prieur and his team from CRIDEAU to compose the Convention Project Relating to the International Statute of Environmentally Displaced Persons.

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TABLE

Table 1 - Classification of Environmentally Displaced Persons

	Disaster An unintended, catastrophic event triggers human migration		Expropriation The willful destruction of environment renders it unfit for human habitation		Deterioration An incremental deterioration of the environment compels migration as constraints to human survival increase	
Sub-Category	Natural	Technological	Development	Ecocide	Pollution	Depletion
Origin	Natural	Anthropogenic	Anthropogenic	Anthropogenic	Anthropogenic	Anthropogenic
Intention	Unintentional	Unintentional	Intentional	Intentional	Unintentional	Unintentional
Duration	Acute	Acute	Acute	Acute	Gradual	Gradual

Source: BATES, Diane C. Environmental refugees? Classifying human migrations caused by environmental change. *Population and Environment*, v. 23, n. 5, p. 465-477, may 2002. Available at: <<http://home.student.uu.se/h/heax7669/Samh%E4llets%20Geografi/Artiklar/Bates.pdf>>. Access on: 17 apr. 2012. p. 470. The table was adapted by the authors of the article.

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