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Intergenerational and Intragenerational Responsibility: How Does Environmental Law Deal with the Principle of Non-refoulement?

Cinzia Cilento[a]

Abstract

While intergenerational responsibility commonly refers to the satisfaction of the needs and demands of present and future generations (Roemer, 2007), intra-generational responsibility implies the concept of justice in a broad sense, for instance equity in measured terms of quality of life, availability of essential goods and access to equal opportunities according to capabilities and resources, guaranteed to each community member (Padilla, 2002). Both definitions are increasingly finding their way into constitutional environmental law and especially within the climate change debate, but in which respect are they interconnected? How do inter- and intra-generational responsibilities approach the issue of "climate refugees" and the principle of *non-refoulement*? The following paper aims to investigate what are the main features of environmental inter- and intragenerational responsibility and how normative developments related to the environmental law arena are equipped to embed intergenerational equity and the principle of *non-refoulement* through the case study of Ioane Teitiota, a farmer of the Republic of Kiribati who emigrated from the island of Tarawa to New Zealand prompting his displacement because of climate change.

Keywords: intergenerational responsibility, non-refoulement, climate refugees, environmental law, displacement.

1. Introduction

The climate change issue has returned to the spotlight with greater emphasis and concern through the participation of activists, organisations, and associations, especially on the part of global institutions. The debate highlighted

[a] Department of Political Science, Vanvitelli University, Italy.

Corresponding author:
Cinzia Cilento
E-mail: cinzia.cilento@unicampania.it

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new aspects pertaining to the environment macro-theme, specifically with regard to the role played by human beings on planet earth, in which manner humans relate to natural resources, how they use them, and how they determine to respect and to replenish what has been taken.

Besides keeping in mind the environment's primary value as the main supplier of raw materials necessary for humankind's survival first and development later, as well as its preservation, it is necessary to investigate how the themes of environment and future are closely interconnected and represent two variables inevitably dependent on each other. Reflecting on the future implies looking at what will be the future generations inhabiting and exploiting the planet. Safeguarding the environment does not only represent a moral duty towards the landscape in which one's existence unfolds, but equally signifies ensuring that the environment will be livable to those who will come afterwards.

To respect and protect future generations outlines an anthropocentric view, while developing a cosmovision of the environment that breaks away from the primitive idea whereby the main task and purpose of the human being consisted in exploiting nature in order to fulfil his objectives, and, in particular, depicts a new interpretation of natural resources as inter-temporal factors (Maggio, 1997).

Moreover, it is exactly from the perspective of protecting future generations that the legal constructs of inter- and intra-generational responsibility and equity have been developed.

Through the analysis of these concepts, the following chapter proposes to investigate how inter- and intra-generational equity and responsibility are linked to the phenomenon of climate refugees and consequently to the principle of non-refoulement. The research will be structured in several paragraphs, each of which will discuss the key concepts.

Furthermore, in order to provide a science-based example concerning the principle of non-refoulement and climate refugees, the notions of inter- and intra-generational responsibility will be addressed by looking at the case of Ione Teitiota, the first climate refugee to claim legal redress.

2. Intergenerational and intragenerational responsibilities

However, in order to analyse the concepts of inter- and intra-generational responsibility, it is necessary to step back over the past few years to understand when and how future generations entered the international law framework. Actually, it is not a new occurrence that the two terms appear in constitutional charters and international agreements; the intergenerational perspective has been proposed in various legal forms for a long time, but one of the first

accurate definitions can be found through the International Convention for the Regulation of Whaling, adopted in Washington on 2 December 1946, where the preamble states the significance of the recognition of "[…] the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks"[1].

Furthermore, the Convention highlights how "the history of whaling has seen over-fishing of one area after another and of one species of whale after another to such a degree that it is essential to protect all species of whales from further over-fishing. […] Recognizing that the whale stocks are susceptible of natural increases if whaling is properly regulated, and that increases in the size of whale stocks will permit increases in the number of whales which may be captured without endangering these natural resources" (International Convention for the Regulation of Whaling, 1946).

Therefore, it is evident how by attempting to regulate a complex phenomenon such as whaling, along with the subject of the regulation process to be protected, i.e., the animal, there is also another ethical aspect which aims at safeguarding the species in order to ensure a fair supply for the next generations.

Ensuring hunting and the economic activities associated with it become sustainable through regulation and the creation of a regulatory system capable of limiting damage to wildlife and the ecosystem means supporting those who in the coming generations will eventually choose to engage in such activities. Attentiveness to natural resources, at the time as today, represents a way to simultaneously protect the environment and the humankind, albeit through divergent tools and measures.

Subsequently, with the Declaration of the United Nations Conference on the Human Environment, carried out in Stockholm in 1972, the defence of future generations through the protection of the environment received once again particular consideration, to the point of constituting an imperative and a pivotal point within the text of the Convention.

[1] In detail, the Convention's preamble states: "Recognizing the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks; Considering that the history of whaling has seen over-fishing of one area after another and of one species of whale after another to such a degree that it is essential to protect all species of whales from further over-fishing; Recognizing that the whale stocks are susceptible of natural increases if whaling is properly regulated, and that increases in the size of whale stocks will permit increases in the number of whales which may be captured without endangering these natural resources; Recognizing that it is in the common interest to achieve the optimum level of whale stocks as rapidly as possible without causing widespread economic and nutritional distress".

Indeed, as the Article 6 stated, "to defend and improve the human environment for present and future generations has become an imperative goal for mankind – a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of worldwide economic and social development"[2].

In support of Article 6, in the Stockholm Convention's proclamation, there are two main principles by which it is argued that the fundamental human rights include the right to live an equal, free and dignified life, especially through the purposeful use of natural resources, such as "the air, water, land, flora and fauna"[3] and, as elements characterising the ecosystem in which human beings reside, are worthy of preservation, so as to provide benefits for the generations to come who once again will have the duty of being responsible for the ecosystem.

The Stockholm Conference and its Declaration consisting of 26 principles, all dealing with the environment, represented an important ground-breaking for the establishment of an appropriate and structured international environmental law. Further to the Stockholm Conference, the Vienna Convention for the Protection of the Ozone Layer in 1982 and the Montreal Protocol on the Substances that Deplete the Ozone Layer in 1987 gave a new boost to the environmental agenda, specifically through the participation of institutions and agencies from all over the world within the economic debate on the use and

[2] In detail, Article 6 of the Stockholm Convention states: "A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference, we can do massive and irreversible harm to the earthly environment on which our life and well-being depend. Conversely, through fuller knowledge and wiser action, we can achieve for ourselves and our posterity a better life in an environment more in keeping with human need and hopes. There are broad vistas for the enhancement of environmental quality and the creation of good life. What is needed is an enthusiastic but calm state of mind and intense but orderly work. For the purpose of attaining freedom in the world of nature, man must use knowledge to build, in collaboration with nature, a better environment. To defend and improve human environment for present and future generations has become an imperative goal for mankind-a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of worldwide economic and social development".

[3] Specifically, Principle 2 and Principle 3, which respectively states: "The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate" and "the capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved".

exploitation of chlorofluorocarbons, commonly known as CFCs. Underlining the role of the humankind and future generations is the Brundtland Report, issued in the same year of the Montreal Protocol.

The report, entitled 'Our Common Future', formulated by Gro Harlem Brundtland, chairman of the World Commission on Environment and Development (WCED), analysed the disruption of the environment and modern ecosystems in view of the unbridled development carried out by the Global North, which was also the result of the increasing impoverishment caused by the extraction and exploitation of natural resources located in the Global South.

The report introduced for the first time the concept of sustainable development, a concept currently in vogue and which appeared at the time as a turning point, emphasising how "humanity has the ability to make development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs" (Brundtland, 1987, p. 27).

Along with the concept of sustainable development, the report's points provided an opportunity for the concept of generational justice and responsibility, advocating a new perspective of revolutionary dimension in the history of environmental governance. Accordingly, intergenerational equity assumes that future generations can benefit from the natural resources and the ecosystem in which they will live in an equal manner (Brundtland, 1987).

The ecosystem inherited from previous generations must be in an optimal state of conservation in order to guarantee a balance between economic development and environmental protection, criteria that will apply to the generations that will have access to it and that they will in turn pass on to subsequent generations. This aspect of generational continuity was emphasised by the Declaration on Environment and Development, also known as the Earth Summit, in Rio de Janeiro in 1992.

The Principle 3 stated in the Declaration summarises how "the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations" (Declaration on Environment and Development, 1992) prefiguring what the International Court of Justice will argue in 1996 when ruling on the use of nuclear weapons in connection with the future generations, i.e. "[…] the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment" (International Court of Justice, Reports of Judgments 1996, p. 29).

And it is precisely by stressing how the environment stands for the living space of both current and unborn generations that the notion of intergenerational equity takes shape, realising itself as a value characterised by solidarity and responsibility.

However, at the same time, it is necessary to consider how a disfigured environment can cause disadvantage: "it is not only true that development that exceeds natural limits deteriorates the environment; it is also true that a deteriorated environment impedes development; it is not only true that conflicts, international or internal, deteriorate the environment; it is also true that a deteriorated environment provokes conflicts" (Scovazzi, 2022, p. 73).

Therefore, intergenerational equity "describes fairness in access to and use of planetary resources across time" and implies "not an absolute equality in the allocation of resources across generations, but rather the establishment of a balance between present and future needs, ensuring that future populations have adequate flexibility to realise their goals" (Fanni, 2022, p. 204).

Intending to provide a definition of the concept of intergenerational equity and responsibility as concisely as possible, it is appropriate to refer to Barry, who argues that intergenerational justice "refers to the fulfilment of the needs between present and future generations" (Barry, 1997, p. 47).

According to the author's argument, it can be deduced that intergenerational equity represents a concept that can be applied both on a small and large scale, i.e., both for every individual that is part of a society and for every country that exists on planet earth.

Therefore, the existence of a relationship between the generations in question is evident, but it is also clear that where intergenerational equity is desirable, an intragenerational equity must be similarly realised, i.e., a situation of equal welfare among all individuals that are part of a society and similarly shared by the countries of the globe.

With regard to Padilla's perspective, intragenerational equity means justice for all members of a society (Padilla, 2002), a description that inevitably opens up to the exploration of the justice construct and how it can be applied to a global community while avoiding any sort of litigation.

Understanding intragenerational responsibility from an environmental perspective embodies a complex and extremely difficult issue to address due to the multiplicity of factors and variables that can distinguish one context from another.

In particular, considering the multitude and diversity of the planet's ecosystems, sometimes extremely dissimilar, it is challenging to justify the concept of intragenerational equity, especially when considering the unfavourable climate conditions of some regions compared to more favourable ones.

Due to this complexity, intragenerational equity can be interpreted as an ecological justice that "refers to global justice among different people of the current generation with respect to the distribution of access rights to ecosystem services and the benefits arising from their consumption" while intergenerational equity "relates to justice among people of different generations with regard to the obligations to preserve intact ecosystems to the next generation" (Glotzbach & Baumgartner, 2012, p. 336).

With regard to the concepts of generation and interconnections between generations, in order to deepen the legal notions and the process just outlined, some specifics of a sociological nature are necessary. Firstly, the concept of generation is meant as "a group of individuals who have lived at the same time a decisive and unrepeatable historical experience, drawing from it their own moral orientation and the sense of sharing a common destiny" (Gallino, 1978, p. 331). Although the proposed definition provides a framework, the ambiguity of the concept of generation cannot be avoided, as it is complex to distinguish what is a subject "in act" and what instead represents a subject "in potency". Furthermore, generations do not follow one another in a perfectly linear way, but they can coexist and at times overlap, defining in social reality "an uninterrupted flow of generations that follow one another without interruption" (Gallarati, 2023, p. 164.) Therefore, the concept of future generations refers to individuals who will live in the future, regardless of their moment of birth, being these closely linked and connected to the present generations acting in the social system. Similarly, defining a precise space within which social actors act using environmental resources, and projecting this space into an imaginary possible future, is certainly a tough process, which is why the spatial dimension can be found simply in reference to the planet as a whole. Generations, both present and future, are called on to protect and preserve the planet as a heritage, and thereafter to benefit from the environmental resources that characterize the system in which each one lives and acts. In other words, it is the Earth system that fixes space and time, beyond the contingency of law (Carducci, 2019).

The protection of the environment and the responsibilities that derive from this task cannot be attributable to a particular generation, given the inherent nature of climate change, which, unrelated to a purely present dimension, is instead aimed at the future.

For this reason, it is appropriate to analyse the principles of responsibility considering the concept of transgenerationality. In particular, the relationship between intergenerational and intragenerational responsibility can be analysed by considering the notion of transgenerationality, which refers to the "bond that unites different generations" (Andina, 2019, p. 38) through the transfer of tangible and intangible goods and properties that occur between them. In the

case of the environment, social actors put in place long-term processes, such as the intensive exploitation of natural resources, and therefore propose transgenerational actions, which, however, do not provide for any consent request to future generations, as the actors who will participate in them are to all intents and purposes fictional subjects precisely because they do not exist during this process. Given the non-existence of consensus, it is also possible to assume that the social actors of future generations will not necessarily share the values of previous generations, factor that inevitably weakens the principle of transgenerational responsibility, as "it does not commit present generations to offer the same rights and quality of life to subsequent generations. It commits them, however, to guaranteeing them the possibility of coming into being" (Andina, 2019, p. 44). Since human reality and, in particular, societies are characterized by an existing regulatory framework that is continuously undergoing to evolution and changes, the main engine of the continuous process of renewal of reality (Pennacchioni, 2023) is represented by the human imagination: if social actors mobilize for climate justice in the present in favour of future generations, this happens by virtue of an imaginative capacity, which finds realization in law within the concepts of intergenerational and intragenerational responsibility. Therefore, intergenerational responsibility concerns the principle of equity between different generations, where equity relates to a fair and sustainable distribution of available resources and the opportunities for their exploitation and use over time, in order to guarantee their supply to future generations avoiding dimensions of environmental, economic, and social impoverishment and degradation. It is a matter of responsibility as it refers to the obligation of an ethical and moral nature on the part of present generations to undertake conscious and sustainable choices and decisions in order to rule out or at least reduce damage production, of various kinds, to subsequent generations. With regard to intragenerational responsibility, it implies a fair distribution of resources and opportunities among individuals belonging to the same generation, regardless of socio-economic variables such as place of birth, employment and economic status. In particular, the actions undertaken propose as their main objective the annihilation of inequalities and disparities in opportunities and access to resources for members of the generation at issue. Both principles converge in a macro dimension, known by the concept of ecological justice. It is configured as an umbrella concept as it encompasses different levels, such as human well-being, ecosystems and biodiversity. The objectives of the principles of transgenerational responsibility cannot be achievable separately from environmental protection, as social justice cannot be achieved if we do not recognize the environment as a home of well-being for and of all (present and future generations); the development of the individual is indeed feasible if social

equality is not complemented by environmental equality (Sachs, 1995). For these reasons, the concept of ecological justice includes three major objectives of sustainable development, such as economic competitiveness, environmental sustainability and social cohesion, each of which represents an essential element for the comprehensive and exhaustive application of the principles of intergenerational and intragenerational responsibility, given that environmental problems are "chronic and intrinsic to the society in which they manifest themselves and to its nature" (Landi, 2013, p. 12).

3. Dependence and autonomy between inter- and intra-generational equity models

On the basis of the definitions set out previously, it is possible to visualise how the concepts of intergenerational and intragenerational equity are closely intertwined, especially as regards the presence of rights and duties, which in the case of sustainability have the ultimate aim of protecting and safeguarding the environment in its entirety.

By investigating the points of convergence between the two notions, a dependency between them is clearly conceivable, and it may take on different dimensions. Following a survey conducted by the researchers Glotzbach and Baumgartner in 2012, the relation between intergenerational and intragenerational equity can be declined in three different patterns, each of them leading to distinct results:

> "Independency hypothesis: The objectives of intragenerational and intergenerational ecological justice can be reached independently, that is, achieving one objective does not have any effect on the chances to also achieve the other one.
>
> Facilitation hypothesis: Achieving one objective makes it easier to also achieve the other one. This facilitation may be one-way, or the other way, or a mutual facilitation between the achievement of the two objectives.
>
> Rivalry hypothesis: A fundamental rivalry (trade-off) exists between the objectives of intragenerational and intergenerational ecological justice, that is, achieving one objective makes it more difficult to also achieve the other one" (Glotzbach and Baumgartner, 2012, p. 337).

Therefore, applying the principle of sustainable development through the principles of intergenerational and intragenerational equity, the result, according to the thesis of the two scientists, would not always be advantageous, but would be subject to the relation existing between the two conceptions of ecological justice. In the case of an independent relation, as specified above, the

goals to be achieved will not be the result of a collaboration and dependency between the two spheres belonging to ecological justice but will rather derive from an existing independence within the two approaches. An example can be observed in the use of non-renewable energy sources: if the principle of intra-generational equity is applied, energy available must be distributed among living individuals at a given point in their lives, although such distribution will have an impact on future generations, who are unlikely to be able to profit from the same sources or at least from the same quantity (Perman et al., 2003).

The independent relation between inter- and intra-generational equity can thus be considered as a model capable of high performance in the short term, but it does not ensure the same suitability in the long run. Instead, the facilitation hypothesis has a different structure, as both approaches influence each other. There can be two variables "specified by variant A and B [and] a third variant C is based on the simultaneous existence of both causal links" (Glotzbach and Baumgartner, 2012, p. 339).

The case related to variable A insists on the realisation of intergenerational equity on the basis of existing intergenerational justice, e.g. the occurrence of technological progress and the gradual reduction of poverty in a certain area, besides affecting the standards and the quality of life of the people living in that area will configure a welfare situation for the future generations who will benefit from the development achieved previously, especially taking into account the changes carried out in their environment.

The case for variable B, i.e., intergenerational equity produces positive effects for intragenerational equity, is to date not supported by academic literature and so only scientifically motivated digressions on the subject are possible. Therefore, assuming that the protection of the environment represents a value that can be transmitted by and for several generations, becoming an ideal to be achieved, it is plausible to believe that individuals of the same generation will share a common feeling inherited from their predecessors aimed at caring for the environment as the foundation of their existence on the planet.

The case concerning the variable C, as anticipated, assumes that that both previous hypotheses, A and B, are conceived as well founded, noting that "the protection of intact ecosystems, and the restoration of degraded ones, proves advantageous to the well-being of today's poor people as well as to the well-being of future generations by enhancing the delivery of vital ecosystem services now and in the future" (Glotzbach and Baumgartner, 2012, p. 343).

Furthermore, if future generations will consider the environment as a set of natural resources from which to make profit, individuals belonging to the generation considered would inevitably suffer from the misuse of the environment. Conversely, if previous generations polluted the planet without any consideration of future generations, the damages arising from an improper use of

the environment would make individuals belonging to that generation and those who will come in the future suffering from it.

According with the possible connections that may exist between intergenerational equity and intragenerational responsibility, a phenomenon that relates to the results deriving from the variable relations and their effects on climate change is the environmental migration and the status of climate refugee. However, before exploring how ecological justice can represent a perspective through which international law's responsibilities towards environmental migrants can be researched, in this instance through the principle of non-refoulement, it is necessary to specify their peculiarities and the legislative gap they are subject to.

4. Methodology and goals

The main research question of the present research proposes to investigate the link between the principles of intergenerational and intergenerational responsibility and the principle of non-refoulement, in the light of the environmental and personal protections that the three principles enshrine through their presence and application in international law.

Firstly, it was considered appropriate to make a brief but incisive examination of the concepts of inter- and intragenerational responsibility, in order to illustrate what are the elements that characterize and distinguish these principles. As an extension of the theoretical framework, which deliberately orients the analysis of the research topic towards a legal approach, there are reflections of a sociological nature, especially with reference to the concepts of generation and ecological justice.

With regard to the case study presented, it was chosen by virtue of the media[4] relevance generated at the time of the event, corroborated by sources[5] who claim that Ioane Teitiota's represented a symbolic case in the fight against climate change and the recognition of climate refugee status. The selection of the case study consciously excludes possible parallels with further historical cases, as the aim of the study is not to examine the possible positions of the courts on climate refugees, but to understand through the selected case how the principle of non-refoulement can clash with transgenerational responsibility. In addition, the components of the process represent transpositions of the principles debated in the first paragraphs of the paper, as the asylum seeker perfectly embodies the concept of transgenerationality as head of the family and responsible for the offspring, i.e. future generations, while the legal systems involved provide an accurate picture of the orientation of the institutions and more generally of international law on environmental issues. In detail, the research reproduces sections and extracts of judgments expressed by the courts of New Zealand, which have been retrieved through the web portals of the bodies and institutions that announced them. Therefore, the data analysed concern bureaucratic acts on the part of Mr. Teitiota, in particular the pronouncements of the New Zealand Immigration and Protection Tribunal during the period 2012 -2015, which are available online. A literature review has been conducted on the main sources of international law on refugee status, such as the Geneva Convention and the Protocol relating the Status of Refugees, in

[4] Leading newspapers such as BBC, The Guardian, The New York Times, paid particular interest to the case of Ioane Teitiota, to the point where public opinion has recognised it as the first trial of a climate refugee. Links to the articles follow: T. McDonald, The man who would be the first climate change refuge, BBC, 5 November 2015, https://www.bbc.com/news/world-asia-34674374 S. Dastgheib, Kiribati climate change refugee told he must leave New Zealand, The Guardian, 22 September 2015. https://www.theguardian.com/environment/2015/sep/22/kiribati-climate-change-refugee-told-he-must-leave-new-zealand. A. Ma, New Zealand Deports Man Who Would Have Been First Climate Change Refugee, HuffPost, 24 September 2015. https://www.huffpost.com/entry/would-be-climate-change-refugee-deported_n_56041c53e4b00310edfa4ab8. M. Ives, A Remote Pacific Nation, Threatened by Rising Seas, The New York Times, July 2016. https://www.nytimes.com/2016/07/03/world/asia/climate-change-kiribati.html?searchResultPosition=2.

[5] Through the online portal of the United Nations High Commissioner for Human Rights, it is possible to consult documentation of the Ioane Teitiota trial, in particular, see the report CCPR/C/127/D/2728/2016, in which the various steps of the judicial process are reported. https://www.ohchr.org/en/press-releases/2020/01/historic-un-human-rights-case-opens-door-climate-change-asylum-claims.

order to detect legislative gaps with regard to the climatic dimension in the recognition of refugee status that have existed for decades and still remain nowadays.

5. Climate refugees and the principle of non-refoulement: the Ioane Teitiota case

Under the term climate refugee, the world's media have named an entire group of individuals who migrate from one country to another or from one area to another inside the same country because of environmental disasters. One of the most accurate definitions of climate refugees has been delivered by Atapattu, who claims that "people who are forced to leave their homes or land either temporarily or permanently due to significant environmental damage associated with climate change or where the national state is no longer habitable" (Atapattu 2015, p. 165).

Although there have been several steps forward since the 1951 Geneva Convention which recognises as a refugee "someone who is unable or unwilling to return to their country of origin or owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion" (Geneva Convention, 1951), and through the Protocol Relating to the Status of Refugees of 1967 to the Global Compact for Safe, Orderly and Regular Migration of 2018, innovations in the climate refugee protection issue have been few to the extent that to date a severe and substantial legal gap in international law has to be pointed out, stressing how "there is as of yet no existing binding framework directly addressing the issue of climate induced migration" (McAdam, 2020, p. 712).

Given the non-recognition of the climate dimension of refugee status, if not partially through the Cancun Agreements of 2010, which acknowledge the existence of environmental migrants, there have been numerous requests from people seeking asylum due to environmental disasters, such as floods, earthquakes and hurricanes, that are either pending or not even taken into account by the hosting states, thereby exposing a huge percentage of the world's population in a legal limbo that turns them into invisible refugees.

Among them, one case that particularly caught the attention of the world's mainstream media is that of Ioane Teitiota, a citizen of the Republic of Kiribati, Oceania. The case concerns Ioane's migration from the island of Tarawa, where he resided and which was the headquarters of Mr Teitiota and his family's activities, to the coast of New Zealand in 2007. This relocation was motivated by the progressive sea level rising, a condition that had significantly threatened the

livelihood of Ioane and his family due to the scarcity of drinking water because of saltwater contamination, the erosion of the land and the consequent inability to cultivate it, thus altering the previously stable and sustainable ecosystem of the island of Tarawa into a hostile and unsustainable environment. On these grounds, the applicant had requested asylum from the New Zealand authorities, who rejected the application due to the lack of the necessary conditions for granting admission. He then turned to the Immigration and Protection Tribunal, which, after re-evaluating the examination of the appeals concerning the claims for recognition as a refugee and/or protected person, issued a final negative decision on Mr. Teitiota's asylum application.

However, the Court did not exclude the possibility that environmental degradation could "create pathways into refugee Convention or to the jurisdiction of protected persons" (Immigration and Protection Tribunal judgment on Ioane Teitiota's case, 2013). The Court of Appeal and the Supreme Court denied, then, each of the author's subsequent appeals regarding the same issue. In particular, the Supreme Court in 2015 remarked how on the one hand, if returned to the Republic of Kiribati, Mr. Teitiota would not be in danger of incurring any real harm and, on the other hand, that there was no evidence of any failure on the part of the country's government to offer protection to its citizens in respect of climate change issues.

On 15 September 2015, the appellant was detained and received a deportation order. With all internal legal complaints exhausted, Mr. Teitiota appealed to the United Nations Human Rights Committee, asserting, under Article 5 of the Optional Protocol to the International Covenant on Civil and Political Right (ICCPR), that by deporting him and his family to Kiribati, New Zealand had violated his right to life, as recognised also by Article 6 of the Covenant.

The Committee thus examined the statement in light of all the information made available to it by the sides. When assessing if there was a clear arbitrariness, mistake or unfairness in the assessment made by the authorities of the State party of the author's claim, the Committee notes that, in their decisions, the New Zealand courts admitted the possibility that "the effects of climate change or other natural disasters could provide a basis for protection".

Although the Committee did not dispute the evidence provided by the author, the UN body considered, nevertheless, that the right to life of Mr. Teitiota and his family had not been affected.

Teitiota and his family were not violated by the New Zealand State after their expulsion to Kiribati because the evidence provided by the appellant did not show that he faced a real, personal and reasonably foreseeable danger of a threat to his right to life as a result of violent acts arising from overcrowding or disputes over private land in Kiribati; the appellant was not, in fact, directly

involved in conflicts over cultivable land, neither was there sufficient evidence to recognise that he would not have access to potable water.

Furthermore, the Committee agrees with Teitiota's argument regarding the rising of the sea level which could potentially lead to uninhabitable Kiribati but asserts that the time frame of 10 to 15 years, as suggested by the author, may enable the State of Kiribati, assisted by the international community, to undertake positive measures to secure and, where necessary, relocate its population.

However, there are interesting reflections to be made about this case, since this judgment sets new standards that might impact on future asylum seekers' claims associated with climate change, especially those concerning the principle of non-refoulement. The United Nations Human Rights Committee focuses on the relationship between the principle of non-refoulement and the human fundamental rights, with reference to the obligation of States Parties not to extradite, deport, expel or otherwise remove a person from their territory to countries where the effects of climate change expose them to life-threatening phenomena (Article 6 of the Covenant) or where they run a real risk of being subjected to cruel, inhuman or degrading treatment (Article 7).

In detail, the non-refoulement principle is expressed by Article 33 of the Geneva Convention adopted on 28 July 1951 by the United Nations, which states "no Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion" and "the benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country" (CSR, 33).

Therefore, the principle of non-refoulement implies a nexus between the migratory party and the receiving state, a relation which, in the case of Ione Teitiota, is structured through a bond formed by climate change and interpreted in the light not only of Article 33 CSR, but also, and in particular, according to Articles 6 and 7 of the ICCPR, International Covenant on Civil and Political Rights, a multilateral treaty adopted on 16 December 1966 by the United Nations.

According to the applicant, New Zealand had indeed violated Article 6 of the ICCPR, which establishes the right to life, by not considering the "rising of the sea levels in Kiribati which had resulted in: (a) violent land disputes, (b) lack of access to potable water, (c) deprivation of his means of subsistence due specifically to salinization of the ground, and lastly, (d) overpopulation and frequent and increasingly intense flooding.

In addition, he held that Kiribati was plausibly to be uninhabitable within 10 to 15 years due, principally, to the rising sea levels" (Herrault, 2021, p. 28). Although the Committee declined to endorse the issue raised by Ione Teitiota, the UN judgement sets an extremely significant precedent for future 'climate refugees': the decision represents in fact the first ruling to recognise the right to apply for asylum due to the climate crisis.

Moreover, while the UN committee did not consider that there was a need to protect Teitiota's situation, the verdict has opened the door in favour of future asylum claims. For instance, one of the consequences deriving from the Human Rights Committee's decision on Teitiota's case can be represented by "the Nansen Initiative on Disaster-Induced Cross-Border Displacement launched in 2012 by the governments of Switzerland and Norway, culminating in the 2015 Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, endorsed by 109 states" (McAdam, 2020, 7p. 21), stressing how relevant and powerful has been the UN judgment with reference to the international refugee law field.

All the foregoing leads to the crucial point, where states, according to the HRC, must carefully examine the cases of people who face conditions induced by climate change, circumstances that violate the right to life. Damage caused by sudden events such as storms or floods, or by slow processes such as rising sea levels, salinisation and soil degradation can push people to migrate.

In an ever-changing world, climate change must therefore be considered when talking about refugees. And it is through this reflection that it becomes evident how intergenerational equity, intragenerational equity and the principle of non-refoulement can represent three elements linked by a single common denominator, the climate change.

6. Final remarks

Being aware of the objective challenges encountered by Mr. Ioane Teitiota during the proceedings held in several courts, the most recent one being the United Nations Human Rights Committee and having examined them through the approaches and main principles described within the paper such as intergenerational equity, intragenerational equity and the principle of non-refoulement, what is noticeable is that the notions of responsibility and equity must reflect a collective sphere with reference to both present and future people and generations, but also the individual and institutional aspect that ecological justice encompasses and tries to represent needs not to be underestimated.

In order to achieve genuine equity and compliance for human rights, especially with reference to individuals among a group currently legally unacknowledged as climate refugees, the global institutions, as framers and shapers of international law, must be the driving force behind inter- and intra-generational justice. As argued by Janker and Thieme, experienced academics in environmental sustainability and migration, the involvement of institutions also from a more scientific point of view in debates and conversations on the subject, represents a "particularly important factor because current academic debates mainly analyse problems related to migration on the individual or household scale, often limited to a small number of empirical cases, while political debates take place nationally and internationally, often neglecting individuals' or minorities' needs" (Janker & Thieme, 2021, p. 1433).

Therefore, it becomes imperative to rethink what is meant by inter- and intra-generational equity through a different reading key, a more inclusive, heterogeneous approach that naturally allows plenty space for an assumption, albeit an extremely pessimistic one, that could concern entire age groups in a few decades' time, or rather whole groups forced to migrate due to climate change, those refugees who remain invisible before international law to date.

As Barresi suggests, "our concern for individuals in future generations tends to vary in proportion to the degree to which we perceive those individuals to be genetically related to us. Thus, we tend to care more about our own offspring than about the offspring of our siblings. We tend to care more about the offspring of our siblings than about the offspring of our distant cousins, and so on. We tend to care least about the offspring of people who seem to be the most distantly related to us. To a greater or lesser degree, the offspring of people of races, ethnic groups, or territorial jurisdictions different from our own tend to fall into this category" (Barresi, 1997, p. 73).

Future generations also constitute an issue under the doctrinal viewpoint: to claim that an ideal, project or objective exists as the will of the future generations can turn to be paroxysmal given the non-existence of the subject concerned, which is crucial in the field of law, both international and national. Justifying an activity by asserting that it is beneficial towards future generations and yet enabling them to be protagonists of phenomena in which, for obvious reasons, they are not leading actors, generates a series of legal doubts requiring careful and complex resolution.

Moreover, in environmental matters, entrusting to posterity judgments based on what has been preserved and what has been disfigured over the years due to financial interests can be definitely considered as cowardly conduct which escapes any sort of condemnation in view of the abundance of soft law and the lack of hard law in international environmental protection. With reference instead to the principle of non-refoulement, it is plausible to

hypothesise when climate refugees will obtain the legal recognition, they deserve on the basis of the motivations triggering migration, which, endorsed by the courts, they will be free to locate wherever they feel like, inevitably triggering dynamics of cultural hybridisation along with the resulting crises.

Therefore, will the right to life and not to be tortured continue to stand undeniable, or will it be side-lined by virtue of an unbridled intragenerational justice devoid of common sense? Unravelling climate change in its juridical and sociological components can certainly play an important role in understanding eco-justice, environmental preservation, and what will be the right of future generations, in whom most of the responsibilities and burdens are now placed, for which, despite perhaps beneficial intentions, previous generations have failed to take responsibility.

The Teitiota case clearly highlights the gaps, still present today, in international law in facing the issue of climate refugees and more generally while addressing the challenges posed by climate change. The evolution of international law, even if constant, has failed to keep pace with the increasing complexity of environmental issues and the related human rights implications. In particular, the case described highlights the inadequacy of the existing legal framework in protecting individuals uprooted from their territories due to environmental disasters caused by climate change. The need for a new legal paradigm suitable to cope, recognize and protect the rights of people forced to migrate due to the impacts of climate change is self-evident and cannot be overlooked beyond repair. What is urgently demanded is an approach which looks at climate as a social as well as a legal and economic matter, and which has to accomplish the tasks of protecting and dealing with the broader social dynamics and changes which underway globally. Recognizing the inequalities and vulnerabilities generated by climate change implies an analysis that goes beyond the mere environmental dimension. It is a problem that deeply affects the fundamental values of social and intergenerational justice. Therefore, to direct collective actions both nationally and internationally towards greater equity and sustainability represents a moral and political imperative, whose main goal lies in safeguarding each sphere of human existence and avoiding as many losses as possible[6].

[6] Specific reference is made to the diagram of the "dimensions of loss" developed by Elliott: "politics of loss, knowledge of loss, practices of loss, materiality of loss". In particular, reference is made to the work: Elliott, R. (2018). The Sociology of Climate Change as a Sociology of Loss. *European Journal of Sociology*, 59(3), 301–337.

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