Immigrazione e asilo

Non-refoulement of Climate Change Migrants: Individual Human Rights Protection or 'Responsibility to Protect'? The *Teitiota* Case Before the Human Rights Committee

Table of contents: 1. Introduction. – 2. The facts of the case and the position of the parties. – 3. Climate change as a violation of the right to life, including the right to a life with dignity. – 4. Non-refoulement: a positive obligation to protect against the effects of climate change? – 5. The Committee's findings in the specific case: no 'reasonably foreseeable risks' in Kiribati. – 6. Establishing the existence of a 'real risk': the threshold of gravity applied. – 7. Concluding remarks and some further suggestions from a human rights perspective.

Human Rights Committee, *Teitiota v. New Zealand*, Communication No. 2728/2016, *Views* of 24 october 2019 (tbinternet.ohchr.org)

1. In 2019, the UN High Commissioner for Human Rights, Michelle Bachelet, described climate change as one of the greatest global threats to human rights (Opening statement at the 42nd session of the Human Rights Council, 9 September 2019, at www.ohchr.org). Among those particularly at risk are the residents of small island states, since, due to global warming, ocean waters are expanding and glaciers are melting, causing sea levels to rise. Several islands in the Pacific Ocean are, thus, at risk of being submerged, Kiribati being one of them. As stated by the UN Special Rapporteur on human rights and the environment: «[e]ntire communities have been or are in the process of being relocated owing to rising sea levels, coastal erosion, storm surges, salinization and other climate impacts» (*Safe Climate: Report of the Special Rapporteur on Human Rights and the Environment*, UN Doc. A/74/161, 1 October 2019, p. 11).

In *Teitiota* v. *New Zealand* (2728/2016), the Human Rights Committee (HRC) had to establish whether the harmful effects of climate change on the lives and wellbeing of persons in specially affected countries can amount to relevant risks of violations of the right to life under Art. 6 of the International Covenant on Civil and Political Rights (ICCPR), so as to trigger the obligation of *non-refoulement*. Although it excluded that in the present case «the author's rights under Art. 6 of the Covenant were violated upon his deportation to the Republic of Kiribati in 2015» (para. 9.14), the Committee, in its decision of 24 October 2019, took the ground-breaking stance that «without robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the *non-refoulement* obligations of sending states» (para. 9.11) (for previous comments see: J. Hamzah Sendut, "Climate Change as a Trigger of Non-Refoulement Obligations Under International Human Rights Law", in *EJIL: Talk!*, 6 February 2020, at www.ejiltalk.org; A. Brambilla, M. Castiglione, "Migranti ambientali e divieto di respingimento", 14 February 2020, at www.asgi.it; G. Reeh, "Climate Change in the Human Rights Committee", in *EJIL: Talk!*, 18 February 2020, at www.ejiltalk.org; F. Maletto, "Non-refoulement e

ISSN: 1971-7105

cambiamento climatico: il caso Teitiota c. Nuova Zelanda", in *SIDIBlog*, 23 March 2020, at www.sidiblog.org).

2. In May 2012, Ioane Teitiota, a national of the Republic of Kiribati, applied for refugee status in New Zealand, claiming that he had been forced to leave the island of Tarawa and move to New Zealand with his wife in 2007, by the life-threatening effects of sea level rise in Kiribati. In August 2012, a Refugee and Protection Officer rejected Mr. Teitiota's claim and, in June 2013, New Zealand's Immigration and Protection Tribunal denied his appeal of the decision. Besides asserting that he was not a 'refugee' as defined by the 1951 Convention relating to the Status of Refugees, with regard to the ICCPR the Tribunal concluded that no substantial grounds existed for believing that he or any of his family members would be in danger of a violation of their rights under Art. 6 of the ICCPR, since he had not established that there was a sufficient degree of risk for life in Kiribati. The Court of Appeal and the Supreme Court each denied the author's subsequent appeals concerning the same matter. In September 2015, therefore, Mr. Teitiota was removed to Kiribati (paras. 2.8-9).

On 15 September 2015, Mr. Teitiota submitted a communication before the HRC, claiming that, by removing him to Kiribati, New Zealand had violated his right to life under the Covenant. In fact, sea level rise in Kiribati had resulted in the scarcity of habitable space (which, in turn, increasingly caused violent, life-endangering land disputes), as well as environmental degradation, including saltwater contamination of freshwater supplies (para. 3).

The Committee took note of the wide information concerning the serious situation in Kiribati examined by the Tribunal, including the 2007 National Adaptation Programme of Action filed by the Republic of Kiribati under the United Nations Framework Convention on Climate Change and other reports depicting a country in crisis, owing to climate change and population pressure. The Committee also noted the applicant's admission that his experiences were common to all the people in Kiribati, and his belief of being exposed to «an intermediate risk of serious harm» in the country, which could be «expected to survive […] for 10 to 15 more years» (para. 7.2).

The domestic courts, and the State of New Zealand before the HRC, «found the author to be entirely credible, and accepted the evidence he presented» (para. 4). However, they held that no evidence was provided by Mr. Teitiota to establish that an *imminent* risk existed due to sea level rise, in particular that deaths from events such high tides or storm surges «were occurring with such regularity as to raise the prospect of death […] beyond conjecture and surmise» (para. 4.6). Moreover, New Zealand insisted that the Covenant provides protection against *refoulement* when there are substantial grounds for believing that the person would be subjected to *arbitrary deprivation of life*, i.e., to a violation by the receiving State of its obligations under art. 6 of the Covenant, either negative or positive. Indeed, the domestic jurisdictions accepted that the right to life involves a positive obligation to fulfil it «by taking programmatic steps to provide for the basic necessities for life». They also held, however, that «the author could not point to any act or omission by the Government of Kiribati that might indicate a risk that he would be arbitrarily deprived of his life», since there was no evidence that it was failing «to take steps to protect its citizens from the effects of environmental degradation to the extent that it could». Rather, the Kiribati Government «was active on the international stage concerning the threats of climate change, as demonstrated by the 2007 Programme of Action» (paras. 2.9-10 and para. 4.6). Although not ruling out «the possibility that environmental degradation resulting from climate change or other natural disasters could create a path-

way into the Refugee Convention or protected person jurisdiction», the authorities considered that «the author and his family had not established such a pathway» (para. 4.5).

3. Contrary to New Zealand's 'state-centred' view of the source of the risk, the HRC in *Teitiota* plainly stated that «the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6». The underlying assumption is the characterization of the environmental consequences of climate change as human rights violations *per se*, i.e., regardless of any legal responsibility of the receiving State, in line with the approach first adopted in General Comment (GC) no. 36 of 2018 on the right to life (UN Doc. CCPR/C/GC/36 of 2 November 2018). Indeed, the Committee starts its consideration of the merits by recalling that «environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life» (quoting GC No. 36, para. 62), and that in its own case-law and in that of regional human rights tribunals it has been recognized that «environmental degradation can compromise effective enjoyment of the right to life» and «adversely affect an individual's well-being and lead to a violation of the right to life» (paras. 9.4-5).

A further point to be stressed is the Committee's application, for the third time in its case-law, of the 'right to a life with dignity' as a component of the right to life, also spelled out in GC No. 36. The Committee recalls indeed that «the right to life also includes the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death» (para. 9.4; see T.M. Antkowiak, "A 'Dignified Life' and the Resurgence of Social Rights', *Northwestern Journal of Human Rights* 2020, p. 1 ff.). As the *Teitiota* decision proves, the recognition of the socio-economic dimension of the right to life, entailing the right to access to essential goods and services such as water, food and sanitation, is critical in climate change cases. Indeed, it provides the legal tools to consider and assess the consequences, in terms of human rights including the right to protection against *refoulement*, of all types of events through which climate change-induced harm can occur, i.e., not only 'sudden-onset events' (such as intense storms and flooding), but also 'slow-onset processes' (such as sea level rise, salinization, and land degradation) which, as the Committee observes, «can both propel cross-border movement of individuals seeking protection from climate change-related harm». In the specific case, as will be said shortly, recognition of the right to a decent life has allowed the HRC to conclude that even before an extreme risk is realized, such as that of an entire country being submerged by the sea, «the conditions of life in such a country may become incompatible with the right to life with dignity», due to slow-onset processes having «a gradual, adverse impact on livelihoods and resources over a period of months to years» (para. 9.11).

4. In its consideration of the merits, the Committee recalls, first of all, that under the Covenant States parties have an obligation «not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant», and that, as clarified in GC no. 36, this «risk must be personal, it cannot derive merely from the general conditions in the receiving State, except in the most extreme cases, and there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists» (para. 9.4).

The Committee then starts its reasoning to assess whether the obligation of *non-refoulement* was triggered by the alleged risks for the applicant's right to life in Kiribati recalling: a) that «the protection of that right requires States parties to adopt positive measures», and b) «that the obligation of States parties to respect and ensure the right to life extends to *reasonably foreseeable threats* and life-threatening situations that can result in loss of life» (para. 9.4). All the references quoted in the footnotes to underpin these principles relate to cases drawn from the case-law of the HRC and of regional human rights bodies, concerning the States' positive obligation to protect the human rights of those under their jurisdiction from environmental threats or other natural hazards *occurring within their own territories*. Such 'positive obligation', indeed, usually presupposes an effective governmental authority exercised by the State upon a territory. However, the Committee seems to recall these pronouncements in order to identify the founding principles of the obligation of *non-refoulement*, in the face of foreseeable risks arising from climate change-induced environmental degradation in a receiving country. The Committee even 'borrows' the formula used in its most recent decisions, where it found that the States parties were in violation of their positive obligation to protect the 'right to life with dignity' of those under their jurisdictions from *territorial* or *domestic* threats (i.e. *Toussaint* v. *Canada* of 2018, CCPR/C/123/D/2348/2014, para. 11.3 and *Portillo Cáceres et al.* v. *Paraguay* of 2019, CCPR/C/126/D/2751/2016, para. 7.5) stating that «the obligation of States parties to respect and ensure the right to life extends to *reasonably foreseeable threats* and life-threatening situations that can result in loss of life» (para. 9.4, *emphasis added*). Indeed, as Section 5 will further clarify, in the *Teitiota* decision the phrase 'reasonably foreseeable threats' is adopted and used by the HRC as a synonym for 'real risk', i.e., as the formula expressing the test for assessing whether the obligation of *non-refoulement* is triggered.

In this respect, it is worth hinting at the well-known debate on the legal nature of the obligation of *non-refoulement*, which has been developed in relation to the case-law of the European Court of Human Rights (ECtHR) concerning the *non-refoulement* of persons at risk of torture or ill-treatment, and to recall that in a quite recent key 'medical case' the ECtHR expressly defined it for the first time as a *negative* obligation (*Paposhvili v. Belgium* [GC], Application no. 41738/10, Judgment of 13 December 2016, para. 188, on which see the critical remarks of V. Stoyanova, "How Exceptional Must 'Very Exceptional' Be? Non-Refoulement, Socio-Economic Deprivation and *Paposhvili* v. *Belgium*", *International Journal of Refugee Law* 2017, p. 580 ff.). In the present context, it seems sufficient, however, to point out that the HRC in *Teitiota*, while examining the obligation of *non-refoulement* in a climate change scenario, 'speaks the language' of the positive obligation to protect the right to life of the persons involved against foreseeable environmental threats. It is also interesting to note that the categorization of the obligation of *non-refoulement* as a 'positive obligation to protect' is squarely adopted by one member of the Committee, Vasilka Sancin, in her dissenting opinion, arguing that «it falls on the State Party […] to demonstrate that the author and his family would in fact enjoy access to safe drinking […] water in Kiribati, *to comply with its positive duty to protect life from risks arising from known natural hazards*» (para. 5 of the dissenting opinion, *emphasis added*).

5. As anticipated above, the HRC found to be «not in a position to hold that the author's rights under article 6 of the Covenant were violated upon his deportation to the Republic of Kiribati in 2015» (para. 9.14). It so concluded after having reviewed the evaluation by the State party's authorities of the author's claims concerning the different risks allegedly

arising from the environmental situation in Kiribati, and having found no clear arbitrariness, error or injustice in it.

Starting with the author's claim «that the increasing scarcity of habitable land on Tarawa has led to violent land disputes that have produced fatalities», the Committee recalled that, according to its consistent case-law, a general situation of violence can create a real risk of irreparable harm under Arts 6 or 7 of the Covenant only in the most extreme cases, «where there is a real risk of harm simply by virtue of an individual being exposed to such violence on return». The Committee observed that the author had referred only to sporadic incidents, he had never been involved in such a land dispute, and he was not alleging a risk specific to him but rather a general risk faced by all individuals in Kiribati. The Committee, therefore, concluded that the author had not «demonstrated clear arbitrariness or error in the domestic authorities' assessment as to whether he faced a real, personal and *reasonably foreseeable risk* of a threat to his right to life as a result of violent acts resulting from overcrowding or private land disputes in Kiribati» (para. 9.7).

As to the author's claim that he would be seriously harmed by the lack of access to potable water on Tarawa, the Committee agreed with the domestic authorities that the author had not provided sufficient evidence «indicating that the supply of fresh water [was] inaccessible, insufficient or unsafe so as to produce a *reasonably foreseeable threat* of a health risk that would impair his right to enjoy a life with dignity or cause his unnatural or premature death». Similarly, as regards the alleged lack of means of subsistence, the Committee considered the author's assertion that to grow crops had become *difficult*, not *impossible*; that most nutritious crops remained available; and that he had provided no other information to indicate that when his removal occurred «there was a *real and reasonably foreseeable risk* that he would be exposed to a situation of indigence, deprivation of food, and extreme precarity that could threaten his right to life, including his right to a life with dignity» (paras. 9.8-9, emphasis added).

Finally, as regards the author's feared risks for life represented by «frequent and increasingly intense flooding and breaches of sea walls», i.e., sudden-onset events potentially culminating with the whole country being submerged by the sea, the HRC noted and accepted his assertion that sea level rise would render the Republic of Kiribati uninhabitable within 10 to 15 years (para. 9.10). In this respect, the Committee noted that such timeframe «could allow for intervening acts by the Republic of Kiribati, with the assistance of the international community, to take affirmative measures to protect and, where necessary, relocate its population», and it further stressed that the Republic of Kiribati was *indeed* «taking adaptive measures to reduce existing vulnerabilities and build resilience to climate change-related harms». Therefore, the Committee found nothing clearly arbitrary or erroneous in the domestic authorities' assessment that the measures taken by the Republic of Kiribati would suffice to protect the author's right to life under Art. 6 of the Covenant (para. 9.12).

It is clear, at this point, that the question before the Committee – i.e., whether removing Mr. Teitiota to Kiribati violated his right to life – was a matter of assessing the seriousness of the general environmental situation in Kiribati and the residual ability of the Government of that country to provide meaningful protection against the effects of climate change to its population.

6. It is essential to analyse now how the Committee understood and applied the *real* or *reasonably foreseeable risk* test to the risks for the author's life represented by the effects of climate change, i.e., what standard it adopted to establish it. The aim will be, then, to

assess, in the order, whether such test is susceptible to be applied to other climate change contexts, not so extreme as Kiribati's; its aptness to adequately take into account the global responsibility for climate change and its consequences; the link that the Committee seems to trace between the threshold established and the notion of the 'responsibility to protect'; the limits and potentialities of such an approach in the perspective of human rights protection.

The first aspect to be considered is the peculiarity of the assessment that the Committee had to carry out to establish whether a *real risk* existed for Mr. Teitiota in Kiribati. This lies in the fact that the alleged risks were not due to his individual condition or identity, so as to affect him in a distinct way. Rather, the hardships and threats he feared were common to all the inhabitants of Tarawa and they were due to the general situation of environmental degradation caused by sea level rise. Absent specific traits distinguishing the author from the rest of the population, the test of foreseeability applied by the Committee required him to show that it would have been *impossible* for him to escape the effects of climate change. The Committee adopted therefore a very high threshold, requiring a level of seriousness of the general situation such that the only reasonable inference was that *anyone* in Kiribati was at risk of experiencing life-threatening events and indecent living conditions. The threshold equates in fact to a 'declaration of uninhabitability' of the country and even 'State collapse', due to the impossibility for any person to survive or live there without experiencing either catastrophic events or lack of basic goods, without any residual possibility for the local government to provide protection.

This standard seems to correspond to the one codified in GC no. 36 (para. 30) and drawn from the case-law of the ECtHR (see *N.A. v. United Kingdom*, application no. 25904/07, Judgment of 17 July 2008, para. 115), according to which the risk «cannot derive merely from the general conditions in the receiving State, *except in the most extreme cases*» (*emphasis added*). As mentioned, in *Teitiota* the HRC quoted and applied it in relation to the risk for life stemming from violent land disputes, where it noted the absence of a situation of general conflict in Kiribati, but the same logic underlies the test applied to assess the foreseeability of the other alleged risks arising from generalized environmental degradation and not affecting the applicant specifically. It is interesting to note, at this point, that in the case-law of the ECtHR a general situation of violence in the receiving State has been considered sufficiently 'extreme' to prove *per se* the existence of a real risk for the applicant only in a context of 'State failure' (i.e., Somalia, see *Sufi and Elmi v. the United Kingdom*, Applications nos. 8319/07 and 11449/07, Judgment of 28 June 2011, para. 216). Also worth mentioning is the European Court stance, articulated in this judgment, that when the risk of an irreparable harm originates from generalized dire humanitarian conditions (such as those existing in certain IDPs and refugee camps in Somalia), the circumstance that the humanitarian crisis, although aggravated by a naturally occurring phenomenon such as a drought, was predominantly due to human conduct (in that case the direct and indirect actions of the parties to the conflict), should lead to adopt a less demanding test than the 'compelling humanitarian grounds' to trigger a *non-refoulement* effect (*Sufi and Elmi v. the United Kingdom*, cit. paras. 281-292). This is a suggestion that the HRC might have endorsed (and maybe might endorse in the future) to lower the 'very high threshold of gravity' of the general environmental situation, considering the human (global and diffused) responsibility for climate change.

That said, one critical question that the threshold of gravity adopted by the Committee raises (i.e., 'uninhabitability') is the following: who has the authority to certify or decide that the general situation has reached that threshold, that 'all is lost', and the State cannot

exercise its responsibility to protect its population anymore? It seems, indeed, that a kind of 'global consensus' would be needed on the issue (a similar problem in the field of natural disasters and humanitarian assistance has been highlighted by Focarelli, noting the lack of international consent «on how great a catastrophe has to be in order to be considered a disaster for legal purposes, nor is there any agreement on what criteria should be used to measure its scale», C. Focarelli, "Duty to Protect in Cases of Natural Disasters", *Max Planck EPIL*, October 2013, available at www.mpepil.com). Whether and when the threshold is reached should be the object of an authoritative international decision, so that States know whether they are obliged or not to guarantee international protection. This authority could be the HRC within the ICCPR system, but the existing international human rights bodies should adopt a uniform stance on the matter. A possible solution might be a determination by the General Assembly, or the UNHCR, upon consultation of expert bodies such as the International Panel on Climate Change, and the compilation of an official list of 'unsafe/collapsed' countries due to the effects of climate change.

However, the reasons that led the Committee to adopt 'uninhabitability' as the threshold required to prove the existence of a real risk in a receiving country, when the assessment must be made only on grounds of the generalized effects of climate change, are rather easy to understand: to conclude that the author's removal to Kiribati violated his right to life would have meant to recognize that the right to life of all the inhabitants of Kiribati was/is impaired by the mere fact of their living there, and that they were/are all entitled to international protection. Such a conclusion has probably been judged by the Committee as not reflecting the predominant feeling, within the international community, as to the appropriate point of balance between the States' interest to control their immigration policies and the interest of those most affected by the consequences of climate change to find international protection (see generally V. Chetail, *International Migration Law*, Oxford, 2020).

Furthermore, the Committee is probably aware that the best interest of the i-Kiribatis is the survival of their country and the chance to continue living there in dignity, or, should this become impossible, the adoption of alternative durable solutions entailing the relocation of the whole population. From this perspective, the best way for the international community to promote the human right to life of the inhabitants of an affected country, is to provide support and assistance to the government: a) in its mitigating and adaptation efforts, as long as possible; b) in agreeing plans for relocation and channels for international protection, through a systematic and policy-oriented approach, rather than under the banner of individual human rights protection. In this respect, reference to the assistance by the international community to the Republic of Kiribati in taking «affirmative measures *to protect and, where necessary, relocate its population*» in para. 9.12 of the Teitiota decision is remarkable.

In this sense, the decision seems to suggest and promote future discussion and search for solutions on 'climate change and the most affected populations' using the paradigm of the *responsibility to protect* doctrine, revised and adapted to the large-scale consequences of climate change, in particular as to the role of the international community – no question of 'military intervention' being at stake in this case (see, convincingly arguing in favour of the application of R2P doctrine to climate change, K. Nadakavukaren Schefer, T. Cottier, "Responsibility to Protect (R2P) and the Emerging Principle of Common Concern", Working Paper No. 2012/29, June 2012, at www.wti.org).

7. From the point of view of the protection of individual human rights, the approach adopted by the HRC might not be satisfactory. An objection in this sense has been raised indeed by one of the dissenting members of the Committee, Duncan Laki Muhumuza, who considered that «[t]he conditions of life laid out by the author – resulting from climate change in the Republic of Kiribati, are significantly grave, […] reveal a livelihood short of the dignity that the Convention seeks to protect [and] pose a real, personal and reasonably foreseeable risk of a threat to his life under Article 6(1) of the Convention». Although recognizing that «the risk to a person expelled or otherwise removed, must be personal – not deriving from general conditions, except in extreme cases», he stressed that «the threshold should not be too high and unreasonable» and argued for «the need to employ a human-sensitive approach to human rights issues».

It should be stressed, however, that the legal significance of the Teitiota decision lies not only in its having set the test for assessing whether the obligation of *non-refoulement* is triggered when the alleged violations of the right to life and the right not to be subjected to ill-treatment originate *exclusively* from the general situation of environmental degradation caused by climate change.

Indeed, since the Committee has assessed the claims of an author whose personal situation was not different from that of the rest of the population, its conclusions leave open the possibility that *non-refoulement* may be recognized also in geographical contexts characterized by an *intermediate* level of environmental degradation and recurrence of natural hazards caused by climate change: a) for *particularly vulnerable* individuals reasonably not able to endure such a natural habitat; b) when the government of the receiving State does not pursue a policy of protection of its citizens from the effects of climate change; or c) when the Government of the receiving State discriminates among citizens or groups of citizens in its policies to respond to the effects of climate change. In b) and c), the 'risks' for the individual might be defined as 'arbitrary deprivation of life', and in c) the applicant might even qualify as a refugee under the Geneva Convention of 1951. In this sense the *Teitiota* decision must be appraised for having opened the doors to the (future) application of the *non-refoulement* principle more in the logic of individual human rights protection.

That said, in our opinion, *from a human rights perspective* the Committee – while adopting with good reasons a very high threshold (i.e., uninhabitability and State collapse) when the alleged risk depends 'only' on the country's general situation – could have chosen a different path, to arrive at affirming a duty of *non-refoulement* also in the present case. The HRC could have attached more weight to some distinguishing traits of the history of Mr. Teitiota and his family, namely the circumstance that his three children were all born in New Zealand and had never lived in Kiribati, so that their particular vulnerability to the sanitary conditions prevailing there was foreseeable. As mentioned above, the HRC could have adopted and loosely applied the *very compelling humanitarian grounds* standard, articulated by the ECtHR in its case-law accepting 'humanitarian *non-refoulement*' of persons at risk of ill-treatment due to a naturally occurring illness and the lack of sufficient resources to deal with it in the receiving country (see *N.* v. *United Kingdom* [GC], Application no. 26565/05, Judgment of 27 May 2008, para. 43), in order to take into account the global responsibility for the effects of climate change.

DIRITITI UMANI *e* DIRITTO INTERNAZIONALE
vol. 14, 2020, n. 2, pp. 635-643

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ABSTRACT. *Non-refoulement* of Climate Change Migrants: Individual Human Rights Protection or 'Responsibility to Protect'? The *Teitiota* Case Before the Human Rights Committee

In its Views of 24 October 2019 in the case of *Teitiota v. New Zealand*, the Human Rights Committee had to decide whether a 'climate change migrant' enjoyed international protection against *refoulement* under the International Covenant on Civil and Political Rights. The applicant claimed that his forced return to Kiribati exposed him to life-threatening natural hazards and lack of access to fresh water, in violation of his right to life, due to the serious environmental degradation caused by sea level rise in the island state. For the first time, the Committee recognized that the effects of climate change may expose individuals to a violation of their rights to life and to be free from inhuman and degrading treatment under Arts 6 or 7 of the Covenant, thereby triggering the *non-refoulement* obligation. However, in the specific case the Committee concluded that the domestic authorities' assessment that the author had not been exposed to a real risk of a violation of his right to life, including his right to a life with dignity, was not manifestly arbitrary, unreasonable or unjust. After discussing the Committee's assessment of the 'reasonable foreseeability' of this risk in light of the general environmental situation in Kiribati, which equally affects its entire population, this article analyses the high threshold of gravity – i.e., of 'uninhabitability' – applied by the Committee to ascertain the existence of such risk for the individual applicant. It then comments the aptness of such threshold to take into account the global responsibility for climate change adequately, its link with the notion of the 'responsibility to protect', and its limits and potentialities in the perspective of human rights protection.

Keywords: climate change and human rights; environmental migrants; *non-refoulement*; right to life; ICCPR; Responsibility to Protect.

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