

Table of contents

LIST OF ABBREVIATIONS	XI
1 INTRODUCTION	1
1.1 Objective of the study	2
1.1.1 Overall study objective	2
1.1.2 Basic premises of the study	3
1.1.3 Academic and societal contribution of the study	4
1.1.4 Added value of the study compared with existing research	4
1.2 Structure and research questions	6
1.3 Methodology	7
1.4 Scope and limitations	8
PART I – CONCEPTUALIZING ENVIRONMENTALLY FORCED MIGRATION	9
2 THE CONCEPT OF THE ENVIRONMENTAL REFUGEE	11
2.1 Framing the concept of environmental refugees	12
2.1.1 Early academic research	12
2.1.2 Acceptance of the concept by stakeholders	15
2.1.3 The scope of <i>ratione personae</i> and <i>materiae</i>	20
2.1.4 Working definition	26
2.2 Types of environmental refugees in this research	31
2.2.1 Sudden-onset disasters	33
2.2.2 Slow-onset disaster	35
2.2.3 Armed conflict	41
2.2.4 Environmental contamination	43
2.2.5 Planned resettlement	45
2.3 Approaches to environmental refugees	47
2.3.1 The rights-based approach	47
2.3.2 The security approach	48
2.3.3 The responsibility approach	51
2.4 Conclusion	52
PART II – THE INTERNATIONAL LAW FRAMEWORK	55
3 THE RIGHTS-BASED APPROACH	57
3.1 The human rights framework	57
3.1.1 General limitations of the human rights framework	60
3.1.2 Substantive rights	61

3.1.3	Procedural rights	92
3.1.4	Vulnerable groups	102
3.2	The Internally Displaced Persons framework	120
3.2.1	The Guiding Principles on Internally Displaced Persons	121
3.2.2	Inter-Agency Standing Committee Framework on Durable Solutions for Internally Displaced Persons	123
3.2.3	Regional regimes on IDP protection	124
4	SPECIFIC PROTECTION POSSIBILITIES FOR DIFFERENT TYPES OF ENVIRONMENTAL REFUGEES WITHIN THE RIGHTS-BASED APPROACH	129
4.1	Sudden-onset disasters	129
4.1.1	The human rights framework	129
4.1.2	The Internally Displaced Persons framework	135
4.1.3	Conclusion on sudden-onset disasters	138
4.2	Slow-onset disasters	139
4.2.1	The human rights framework	140
4.2.2	The Internally Displaced Persons framework	143
4.2.3	Loss of State territory and the legal framework	146
4.2.4	Conclusion on slow-onset disasters	149
4.3	Armed conflict	150
4.4	Environmental pollution	150
4.4.1	The human rights framework	150
4.4.2	The Internally Displaced Persons framework	155
4.5	Planned resettlement	156
4.5.1	Out of harm's way	158
4.5.2	Development displacement	160
4.5.3	Forced evictions	164
4.5.4	Conclusion	165
5	THE SECURITY APPROACH	167
5.1	Cross-border migration	168
5.1.1	The Refugee Convention relating to the Status of Refugees	169
5.1.2	Regional refugee instruments	174
5.2	Complementary forms of protection	176
5.2.1	Non-refoulement	177
5.2.2	Other forms of complementary protection	189
5.2.3	Conclusion on cross-border migration	194
5.3	Internal migration	195
6	SPECIFIC PROTECTION POSSIBILITIES FOR DIFFERENT TYPES OF ENVIRONMENTAL REFUGEES WITHIN THE SECURITY APPROACH	199
6.1	Sudden-onset disasters	199
6.1.1	Refugee protection	199
6.1.2	Non-refoulement	201
6.1.3	Temporary protection	202
6.1.4	Internal migration	203

6.2	Slow-onset disasters	203
6.2.1	Refugee protection	203
6.2.2	Non-refoulement	204
6.2.3	Temporary protection	205
6.2.4	Internal migration	205
6.2.5	Low-lying small island States	206
6.3	Armed conflict	213
6.4	Environmental pollution	214
6.5	Planned resettlement	214
7	THE RESPONSIBILITY APPROACH	217
7.1	Responsibility under the climate regime	218
7.1.1	Human mobility in the climate change negotiations	225
7.2	Responsibility under the UN Convention on the Law of the Sea	230
7.3	Responsibility under international human rights law	234
7.4	Responsibility under general principles of public international law	241
7.4.1	The 'no-harm' principle	242
7.4.2	The precautionary principle	255
7.4.3	The polluter pays principle	258
7.4.4	The principle of common but differentiated responsibilities	260
7.4.5	Transparency, public participation and access to information and remedies	264
7.5	Invoking State responsibility	267
7.5.1	Forum and standing	269
7.5.2	Damaging activity and attribution	274
7.5.3	Causation	275
7.5.4	Allocation of loss	283
7.6	The principle of sustainable development	291
7.6.1	The Sustainable Development Goals	296
8	SPECIFIC PROTECTION POSSIBILITIES FOR DIFFERENT TYPES OF ENVIRONMENTAL REFUGEES WITHIN THE RESPONSIBILITY APPROACH	299
8.1	Sudden-onset disasters	299
8.2	Slow-onset disasters	300
8.3	Armed conflict	301
8.4	Environmental contamination	301
8.5	Planned resettlement	303
9	GENERAL CONCLUSION ON THE LEGAL INTERNATIONAL FRAMEWORK	307
9.1	Conclusion on the rights-based approach	307
9.2	Conclusion on the security approach	308
9.3	Conclusion on the responsibility approach	309

PART III – CREATIVE INTERPRETATION AND EXTRAPOLATION	311
10 THE RIGHTS-BASED APPROACH	313
10.1 Right to a healthy environment	314
10.1.1 A freestanding right to a healthy environment	315
10.1.2 Substantial rights presupposing a healthy environment	316
10.1.3 Rights of nature	318
10.1.4 The environment as a public good within the context of economic and social rights	320
10.2 Procedural rights	321
10.2.1 Right to information	321
10.2.2 Right to public participation	322
10.2.3 Right to remedy	324
10.3 Positive extraterritorial State obligations	324
10.3.1 Transboundary harm	326
10.3.2 Duty of cooperation	331
10.3.3 R2P	337
10.4 Internally displaced persons	341
11 THE SECURITY APPROACH	343
11.1 The refugee framework	343
11.1.1 Broader interpretation of the Refugee framework	343
11.1.2 Extension of the Refugee Convention	348
11.1.3 The Global Compact on Refugees	350
11.2 The complementary protection framework	351
11.2.1 Non-refoulement	351
11.2.2 Temporary protection	356
11.2.3 Subsidiary protection	357
11.3 Voluntary migration	359
11.3.1 The Global Compact for Safe, Orderly and Regular Migration	360
11.4 Development of new instruments	362
11.4.1 Drafting a new convention	364
12 THE RESPONSIBILITY APPROACH	367
12.1 International Environmental law	368
12.2 Human rights	368
12.3 Responsibility	370
12.3.1 Loss and damage	372
12.3.2 Compensation funds	372
12.3.3 Insurance	375

PART IV – COMBINING APPROACHES	377
13 OVERLAPPING APPROACHES	379
13.1 The rights-based and security approach	381
13.2 The rights-based and responsibility approach	384
13.2.1 Justice	389
13.3 The security and responsibility approach	394
14 A CONTEXT-ORIENTED AND DYNAMIC INTERPRETATION FOR DIFFERENT TYPES OF ENVIRONMENTAL REFUGEES	397
14.1 Sudden onset disasters	398
14.2 Slow-onset disasters	400
14.3 Armed conflict	402
14.4 Environmental contamination	403
14.5 Planned resettlement	404
15 GENERAL CONCLUSION	405
BIBLIOGRAPHY	417
TABLE OF TREATIES	437
TABLE OF CASES	449