Climate change has both direct and indirect impacts on land, and hence on territory. Extreme events such as floods and storms will be made more frequent by climate change, and they can spoil portions of land and deprive its inhabitants of resources usually connected to residency in it. Climate change will provoke enlarging desertification, thereby making inhabitable, or less rich in resources, previously fertile lands. Due to climate change, the area of diffusion of typically tropical diseases will spread, and this may make more difficult human living in certain areas. Increased prices of food, connected to droughts, or difficulties in cultivation connected to alteration in ecosystems, can cause abandonment of certain previously cultivated areas, or alteration of the morphology of certain portions of land. More importantly, some territories will be made literally inhabitable by such events. Finally, in some cases climate change has effects which can cause the disappearance of whole countries, as it is likely to happen when sea levels rising will cause the submersion of some archipelagos in the Pacific, and increased salinification will produce further harms. (IPCC 2013; Paskal 2010)

This paper aims at considering the normative relevance of the effects of climate change on territory. I shall focus on disappearing countries, i.e. on the countries whose territory will be entirely destroyed by submersion. In particular, I am going to consider the following claims:

- **Territorial rights** – Individuals, people and/or states have territorial rights, i.e. they have a bunch of rights connected to the occupation of a bounded territory.
- **Climate refugees** – People forcefully displaced from disappearing countries (from now onwards, climate refugees) have a right to compensation.
- **Territorial rights of climate refugees** – In particular, climate refugees suffer violations of their territorial rights; hence, compensation for them should mainly take the form of the restoration of their rights to a territory, though relocation in a different state.

My main purpose here will be to show that Territorial rights of climate refugees requires a specific interpretation both of the status of climate refugees (to the effect that their rights are stronger than the ones of ordinary environmental migrants), and of Territorial rights (to the effect that individuals may have territorial rights, and that those rights are different in nature and scope with respect to territorial rights of states or peoples). On the basis of this, I am going to argue that Territorial rights of climate refugee may bring to the surface some hitherto unnoticed tensions in territorial rights theories—in particular a tension between individual and collective rights to territory. My general conclusion will be the following: Territorial rights,

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1 I am implicitly distinguishing here between 'land', understood as a portion of Earth's surface not covered by water, and 'territory', understood as the geographical domain of jurisdictional authority: see (Moore 2013, 430)
at least in its standard form, cannot be accepted if *Territorial rights of climate refugees* should also be accepted. In other words, *Territorial rights of climate refugees* makes necessary a substantial revision of many territorial rights theories.

The paper develops as follows. In § 1, I shall set the background of my discussion (dealing in particular with climate change's impacts on territory, the main features of territorial rights theories, and disputes about the status of climate refugees). In § 2, I shall present two arguments to the effect that collective and state territorial rights can be jeopardized by individual territorial rights, and that this is particularly apparent when *Territorial rights of refugees* are at stake. In § 3, I shall consider some possible solutions to the puzzle put forward in § 2. In § 4, I draw some conclusions.

1. Background(s)

A normative treatment of the fate of climate refugees relies on many assumptions. In particular, there are three issues to be considered:

1. How to characterize the entities whose existence is affected by submersion due to climate change impacts on sea levels? Is the sea submerging simply territories or physical countries, or is it causing the disappearance of the states or governments governing those territories, or even of the peoples inhabiting the sinking lands?

2. How should we regard the individuals forcefully displaced by their homelands due to the disaster? Are they to be described as environmental or climate migrants, or are they to be understood as refugees for environmental causes?

3. Which rights are violated, if any, when people are put in this predicament? A plausible answer is that those groups, states or individuals have their territorial rights violated. This answer presupposes a view of what territorial rights are, as well as an argument to the effect that the most proper reaction to the forced displacement of climate refugees is admittance and asylum.

In the three sub-sections to follow, I am going to give a preliminary treatment of the three questions above. Further particulars will be added in the next sections.

1.1. Disappearing countries

As said at the outset, climate changes have obvious impacts on territory. My focus here will not be on indirect impacts (such as desertification and other damages to land), nor on partial impacts (such as submersion of coastal areas of certain states). Rather, I shall focus on total impacts, i.e. on the cases in which sea rising levels will cause sinking of the entire territory of a country. According to the most recent scientific literature, this scenario is likely to actualize in the coming century. The countries affected by these events will be Kiribati, Tuvalu, the Maldives, and the Federated States of Micronesia).\(^{(Gillespie 2003; Kolers 2012; Paskal 2010; Risse 2009, 281–2)}\)

In order to grasp the normative relevance of those facts, some assumptions are needed. Above, I suggested that due to the complete submersion of their territories, certain countries will disappear. This claim needs interpretation and specification.
What is a country? Here, I shall assume that 'country' is a term joining three elements: i. a territory unified by politically enforced boundaries and unitary governmental jurisdiction; ii. the people or peoples living in that territory; iii. the government exercising jurisdiction over that territory. This threefold definition may be understood in two ways. One can claim that the three elements are jointly necessary to the existence of a country, or one can say that some of these elements are only contingently needed—for instance, it might be argued that countries can survive the disappearance of their territory, provided that peoples and their government exist in some form after the destruction of the territory. An analogy with a legitimate government in exile after a foreign unjust invasion could be made. It might be argued that when an entire people with its governors flee from their sinking homeland, the territory disappeared, but the people, represented by its governors, survives in exile. Accordingly, when considering disappearing countries, i.e. countries whose territory has been completely submerged, we should choose one or the other of the following two claims:

*Complete disappearance* – When sea rising levels cause submersion of the whole of the territory inhabited by a people, or by many peoples, and unified by the same governmental jurisdiction, then a country in its full sense disappears. There are not longer people(s), territory and state.

*Partial disappearance* – When sea rising levels cause submersion of the whole of the territory inhabited by a people, or by many peoples, and unified by the same governmental jurisdiction, then the people(s) and the state have their rights to territory violated, even though they remain in existence.

*Complete disappearance* and *Partial disappearance* have different consequences on the issue of territorial rights. *Complete disappearance* entails that when a country disappears, only individuals are left. Then, the disappearance of a country implies a violation of individual rights, not of the collective or corporate rights of peoples and states. Accordingly, she who endorses *Complete disappearance* and claims that disappearing countries are an issue of territorial rights is implicitly suggesting that territorial rights are (also) rights of individuals. *Complete disappearance* rests on the following assumption:

*The necessary link thesis* – The existence and good working of states and/or the flourishing of peoples necessarily require a territory.2

Moreover, *Complete disappearance* entails:

*Individual territorial rights* – Territorial rights are to be granted to individuals.

*Partial disappearance*, by contrast, denies the *Necessary link claim*. It presupposes that states and peoples can subsist even when their territory is completely destroyed. Accordingly, when a country disappears, it might be argued

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2 At least in its clause concerning states, the necessity link thesis is endorsed by many theorists and in international law. See, for instance, (Simmons 2001; M. Moore 2012, 85; 2014, 121, 131). Of course, there is an element in need of further specification here. The necessity link thesis can be understood either as an *existential* claim, to the effect that states and peoples cannot exist without a territory, or as a *normative* claim, to the effect that they cannot work properly without a territory. The first claim can have obvious counter-intuitive consequences; see (Margaret Moore 2014, 126, 132, 134-5)
that the state governing it, or the people(s) inhabiting it, have their territorial rights violated. *Partial disappearance*, then, can be joined with a different view about the holders of territorial rights, a view that can be stated as follows:

*Collective or state territorial rights* – Territorial rights are to be granted to peoples or groups, and/or to states. States and/or peoples have entitlements or rights affecting, or to be exercised over, a territory. Those rights are independent of any rights individuals can have.

There is no need, now, to decide among these views. I shall come back to them later, and their respective merits will be considered. Suffice it to say, that choosing one or the other of them will emerge as a necessary and substantial step in the discussion.

1.2. Climate refugees

Climate change may be one of the factors driving people to migrate. Environmental factors, such as the deterioration of environmental niches, spoiled sinks, and the like, have been commonly recognised among the drivers of migration. However, despite the seriousness of the predicament of migrants, it is rather difficult to consider people forcefully displaced in consequence of extreme climate-induced events as ordinary migrants. It might then be suggested that from a normative point of view, being subjected to *forced displacement* is something different from being merely affected by the common drivers of migration. They are rather to be understood as holders of rights that are stronger than any right to access and protection owed to ordinary migrants. In this paper, I am suggesting this view by calling them *climate refugees*, and not simply *climate migrants*.

The term ‘refugee’ is used in specific legal documents, the main being the 1951 Convention relating to the Status of Refugee. Accordingly, it might be argued that the view suggested above is grounded on international law. However, the Convention provides the following characterization of refugees:

the term ‘refugee’ shall apply to 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it. (art. 1A)

Climate refugees are not mentioned in the definition above. As a consequence, many claimed that considering displacement of people in consequence of environmental disasters as a ground for admittance and asylum is improper. According to these authors, people fleeing from sinking islands lack the feature marking the status of refugees—i.e. being persecuted ‘for reasons of race, religion, nationality, membership of a particular social group or political opinion’. Accordingly, they have no legal grounds to claim admittance.

This objection (and many others) received different answers in recent debates. (Pellegrino 2009, 196 n. 3) In a previous article, I argued that in fact the best

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3 But see also
4 On the 1951 Convention, see
interpretation of the 1951 Convention licenses ascription of the status of refugees to people displaced for climate-related reasons. (Pellegrino 2009, 197–202) There, my reasoning was as follows: The 1951 Convention can be interpreted in three ways. First, it might be argued that the Convention aims at protecting the human rights of the victims of political persecution. Asylum is the response that admitting states can give to violations of individual human rights. (Call this the human right interpretation). This view does not make any difference between human rights violations perpetrated by non-state agencies and human rights encroachments owed to state actions. Asylum in foreign states is not the proper reaction to violations of human rights perpetrated by individuals or non-state groups, though. Those violations should be rather prevented or compensated by the states in whose territories they happen. Their victims should invoke their states for protection and compensation, and not foreign states or the international community at large. Indeed, the proper function of the state, and the ground of its legitimacy, is exactly providing protection for the human rights of citizens. The human rights interpretation, then, fails to identify the holders of the duty specified in the 1951 Convention. The latter ascribes to the international community of states the duty to give admittance and asylum to victims of political persecution. But a duty of admittance of this sort cannot be plausibly be granted to the victims of each and every political persecution. To put it otherwise, individual or non-state violations of human rights are internal affairs, not international issues. Accordingly, they cannot be the proper object of the Convention.

In light of the above, it might be suggested that the Convention is rather addressed to victims of state violations of human rights, understood as a reason to declare not legitimate the persecuting state. Asylum, in this case, amounts to providing the missing state protection of human rights to citizens of illegitimate states. The assumption here is that states have the duty of protecting the human rights not only of their citizens but also of those people whose state fails to give protection. State violations of human rights are proper issues of international interest, as what is at stake is a wrong behaviour of states. Accordingly, asylum is a justified reaction in those cases. (Call this the state abuse interpretation).

However, asylum is not necessarily the proper reaction to state abuses. Indeed, humanitarian intervention, or a just war, in defence of the victims of certain state abuses could be the most proper, and efficient, reaction in this sort of cases. After all, it might be imagined that only few of the victims of state persecution will be able to leave their homeland. The most of them are forced to stay, and to bear persecutions. Asylum and admittance of the few who can escape is not the most efficient response to the moral relevance of state abuses and oppression.

A third interpretation of the rationale of the 1951 Convention is as follows. Asylum seekers are not victims of generic violations of their human rights. Rather, they are people whose specific right to settle on a territory has been violated. Those people are persecuted by their own states to the point that their only possibility is fleeing from the territory of the state. Thus, they do not only have their security and human rights prevented. They are deprived of the right to settle within the territory of their residency. Of course, admittance in a different territory, as well as
protection by a different state, is the only proper response to this predicament. As a consequence, the spirit of the 1951 Convention is to guarantee the right to a territory to people forcefully displaced by their homeland as a consequence of political persecutions. (Call this the right to a territory interpretation of the 1951 Convention.)

This interpretation is not liable to the objections addressed to the human rights and the state abuse interpretations. It seems that admittance and asylum are the most proper, and the only possible, responses to the loss of the right to a territory. Moreover, this interpretation has two obvious benefits. First, it provides a firm ground to the specific entitlement conferred to refugees in the 1951 Convention, i.e. a right to asylum. Second, it allows a clear distinction between refugees and migrants. Whereas refugees can't help to expatriate, and this happens as a consequence of state abuse, political persecution and/or lack of state protection, migrants act freely, and flee from their homeland with the prospect of a better life, not necessarily to escape mortal threats.

Furthermore, the right to a territory interpretation can provide an argument to the effect that people whose displacement has been induced by climate change effects are properly to be considered refugees. The argument can be stated as follows:

i. Necessary condition – People from disappearing states cannot help expatriating. When living in a sinking island, there is no alternative to fleeing from homeland. A shipwrecked country is not a common driver of migration, which can push people to move, but also letting them free to chose. Such a catastrophe lets no alternative. (Risse 2009, 282, 294)

ii. Predictability – There is a reliable cognitive access to the catastrophe, though. Climate-induced submersion is not a sudden event. It is one of the most studied scenarios in climate change science.

iii. State responsibilities – State’s protective duties plausibly incorporate prevention of such disasters, or at least taking measures able to prevent the worst consequences or to resist to them. In the context of climate change, this could be particularly difficult, as preventing and coping with these natural events could require coordinated action on behalf of many states. However, this does not free states of the duty to do their best to protect citizens from the consequences of climate change.

iv. Climate refugees – Citizens of disappearing countries, then, lack state protection and are exposed to threats to their security and basic human rights. In that respect, it is not clear that their status is relevantly dissimilar to the one of political refugees of the common kind.

If this argument is sound, then the 1951 Convention, at least interpreted as aiming at protecting the right to a territory of refugees, provides a legal ground to grant admittance to climate refugees. In what follows, I shall assume that talking of climate refugee is justified on these grounds. Moreover, we will see that this view of the rationale of the 1951 Convention provides a ground to Territorial rights for climate refugees.

1.3. Territorial rights theories

The right to a territory interpretation of the 1951 Convention connects any view on
the treatment of climate refugees to a theory of territorial rights. In recent debates, many theories have been proposed on the ground, the scope and the consequences of territorial rights. Those theories have focused on at least three topics: first, which specific rights are clustered under the label 'territorial rights' (the content issue); second, which entities are to be regarded as holders of those rights (the holder issue); third, which specific justification could be given for territorial rights (the justification issue).

As to the content issue, a shared view is that territorial rights are claims in the Hohfeldian sense, and that they are a cluster of different rights. Different lists of rights are grouped under the label 'territorial rights'. The main debate have dealt with whether rights to resources and rights to control borders should be considered or not as territorial rights. Some authors have recently argued that territorial rights do not essentially involve strong rights over resources, or over the benefits coming from the resources contained in a given territory, nor rights to determine admittance in a given territory. Accordingly, territorial rights are not in contrast with ideals of global redistributive justice. Others have argued that territorial rights are only contingently connected to the control of borders, and that there are cases in which territorial rights can be retained even when rights to admission are granted to some groups of people. What seems took for granted by many theorists is that territorial rights involve, or consists in, certain (limited) jurisdictional rights over persons and things over a given territory. (Dietrich 2014, 176; Miller 2012, 253; Moore 2012, 85; 2014, 129; Simmons 2001, 306)

As to the holder issue, it seems that in current debates many different entities are considered as holders of territorial rights. According to some authors, individuals have direct rights over territory—mainly in the form of rights over the resources contained in a given territory. Others claim that the rights over territory belong to collectives, such as people. Some claim that only states have territorial rights.

These different views can be articulated as follows:

a. Individual territorial rights – Territorial rights are to be granted to individuals.

b. Collective territorial rights – Territorial rights are to be granted to groups—those groups being either i. peoples capable of self-determination and flourishing or ii. collectives having resources rights over a given territory.

c. Corporate territorial rights – Territorial rights are to be granted to states—either for intrinsic or instrumental reasons (either i. because states have originally those rights, or ii. because territorial rights allow to states a proper exercise of their functions).

Views about the right-holder cannot be completely insulated from justificatory claims, as very often the grounds of territorial rights also determine who enjoys those rights. Roughly, in current debates the following strategies have been defended:

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5 A specific justificatory issue is to provide a ground able to justify the territorial rights of specific people over specific places. (Margaret Moore 2014, 121) calls it 'the attachment problem.' I shall not consider this issue in the main text.

6 Meta-jurisdictional rights?
1. **Individual interests or rights** – Territorial rights are to be granted to states, as this is necessary to them in order to protect individual interests and the rights of property of their citizen. (This view assumes c.ii. above) (Simmons 2001)

2. **Representation and protection of individual territorial rights** – Territorial rights are to be granted to states, as they legitimately represent their citizens, who have pre-political rights over territory, which need state protection and enforcement. (This view assumes a. and c.ii. above) (Dietrich 2014, 176)

3. **Self-determination** – Territorial rights are to be granted to peoples, and to their states, as this is necessary to them in order to self-determine themselves. (This view rests on b. ii. and c.ii. above.) (Dietrich 2014, 181, 185; Moore 2012; 2013, 429-31, 437-41; 2014, 127–35; Wellman 2005)

4. **Peoples and nations** – Territorial rights arise from the typical value-enhancing actions of peoples and nations over their territory, actions such as giving shape to a territory in various ways, some of which have symbolic significance. Accordingly, they should be granted to people, on pain of impairing their proper flourishing. (This view connects with b.i. above.) (Meisels 2009; Miller 1995; 2007; 2012)

5. **Justice** – Territorial rights should be granted to legitimate states, as they are necessary tools to the realization of justice for individuals and groups. (This view assumes c.ii. above.) (Buchanan 2003; 2004; Stilz 2011a; 2011b; Ypi 2012)

It is easy to grasp that only 2. entails that individuals have territorial rights, whereas the rest of the justificatory schemes imply that territorial rights should be given to collectives, being either people or states. In 1. and 5., granting territorial rights to states serves the purpose of protecting individual interests and rights, or of realizing justice among individuals. Those strategies are individually-based, in a sense. However, this does not mean that they grant territorial rights to individuals. The only strategy compatible with, and leading support to, an individualistic approach to territorial rights is 2.7

In what follows, I shall attempt to show that Territorial rights for climate refugees has implications for all of the three issues considered above, and in particular that it provides support to an individualistic approach to territorial rights, giving plausibility to 2.

2. The right to a territory

Currently, territorial rights theories deal with three issues. First, they ask whether the rights claimed over territory by certain entities are real ones, namely whether certain claims to territory are justified. Second, they investigate how to solve issues concerning the contrast between territorial rights and other kinds of rights. Third, they inquire into how to settle disputes among who claims territorial rights over the same territory. It is not clear if the question of disappearing countries can be reduced to one or more of those issues. There might be three ways of doing this reduction.

It might be argued that displaced people coming from disappearing countries pose a challenge to established territorial rights of other nations or states, making them weaker, or in need of a stronger justification. Alternatively, it might be

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7 Other classifications of territorial rights theories are in (Dietrich 2011; 2014, 178–; Moore 2014)
claimed that the submersion of entire countries, being caused by the blameworthy inaction of many other countries, creates an issue of global justice, whose relevance overrides any claim on territory that existing states or peoples can have. Accordingly, justice dictates admittance of climate refugees as a way to redistribute to them the resources unduly taken through the natural disasters provoked by climate change.\(^8\)

Finally, it might be suggested that once whole peoples are forcefully displaced by their territory, other territories saved by the submersion become *disputed* lands. This story can have two versions—it might be contended that after the flood any intact territory become disputed, and the rights over it are in need of a stronger justification (this suggestion basically coincides with the first story told above); alternatively, it might be argued that only territories nearby the shipwrecked lands become disputed, as displaced people can claim some rights to them, in virtue of geographical, cultural or other kinds of connections.

Here, it is not my purpose to establish whether those ways of placing the problem of climate refugee within current debates on territorial rights are sound ones. Nor do I aim at proposing that climate refugees are a completely novel topic. Rather, I want to point out some conceptual issues that need to be settled if any of the above routes is to be pursued, and a general morals that can be drawn from them. If climate refugees create an issue within territorial rights theories, then the following puzzles should be considered:

**A.** As said earlier (in § 1.1.), it might be thought either that submersion destroys the territory, but also the state and the people(s) living in it (this is *Complete disappearance* ) or that the government and the people(s) can survive the shipwreck of their territory (this is *Partial disappearance*). Any normative solution to the problem of the rights at stake in the case of a disappearing country should choose one of those views, and provide reasons in favour of the choice.

**B.** As emphasized in § 1.2., in order to ascribe the status of refugees to people placed in consequence of climate-induced submersion of their homeland a specific interpretation of the 1951 Convention on refugees is needed. So interpreted, the Convention protects a specific *individual* right to a territory. This right turns out to be much narrower in scope than standard territorial rights.

**C.** As said in § 1.1., in standard treatments it is claimed that climate refugees should be granted admittance and asylum in foreign countries. This policy, if actually implemented, could have consequences that can weaken territorial rights of states as currently understood. It turns out that individual rights to a territory on behalf of climate refugees could go against collective territorial rights of states and peoples.

In the next sub-sections, I shall give further details on each of the issues above.

### 2.1. Complete and partial disappearance

When sea submerges a whole country, as it will likely to happen due to certain

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\(^8\) Cp. (Moore 2013)
effects of climate change on sea levels, something disappears. Surely, a territory disappears. If one endorses the necessity link thesis, and sees states and peoples as essentially linked to territory, then she will claim that the sea destroys states and peoples, as well as territories. As said earlier, this is a view called Complete disappearance. This view entails that if disappearing countries create an issue of territorial rights, this issue can only concern individuals—and their individual right to a territory. Disappearance of whole countries caused by submersion cannot raise issues of territorial rights for the states and the peoples who inhabited the submerged territory. Of course, this does not mean that catastrophes such as the ones I am discussing are morally indifferent. It might be claimed that the groups whose emissions lead to climate change are liable to be deemed responsible for the destruction of whole countries. But this raises issues of justice, not issues concerning the rights of the peoples and states destroyed. The analogy here could be with certain Epicurean accounts of posthumous harm. According to some writers, nobody can be harmed by events obtaining after her death. Likewise, peoples and states cannot be harmed by events causing their disappearance.

Complete disappearance might be regarded as implausible, though, and for apparent reasons. For it seems that floods and catastrophes constitute obvious damages to the peoples and states whose territory is destroyed or spoiled. This thought could lead to two moves. One can either abandon Complete disappearance, or try to find an interpretation of it where complete submersion of a country is after all an issue of territorial rights.

A seemingly plausible alternative to Complete disappearance is Partial disappearance, i.e. the view that when sea levels rise and submerge whole countries what is destroyed is the territory, but states and peoples can survive this event. Partial disappearance obviously entails that surviving states and peoples have been harmed, and this harm could well concern their rights over the destroyed territory.

As said in § 1.1., Partial disappearance entails that the relationship between territory on one hand and states or peoples on the other is rather loose. States and peoples can exist, and they can partially work without having a territory. For instance, (Moore 2014, 131) claims that 'diaspora people or people that are not territorially concentrated on an area of sufficient size and resources to enable them to fulfil the functions of a state are not entitled to be collectively self-determining in a state, but they can exercise less robust non-statist forms of self-determination, either in sub-state units or through non-territorial mechanisms.' However, she also says that 'most significant kinds of self-determination [...] involves having jurisdictional authority over a geographical area.'

But Partial disappearance can turn out to be controversial for other reasons. On one hand, if states and peoples can live and work without having a territory, it might be contended that submersion can be a serious harm, but it is not an issue of rights, as it does not decrease the value, and the obtaining, of statehood or belonging to a people. On the other hand, this amounts to saying that the necessary
link thesis, which is implied by Complete disappearance, is not only plausible in itself, but also somewhat required to support the relevance of territorial rights. In other words, it seems that if states and peoples can subsist and properly work without having a territory and without having territorial rights, the latter are less meaningful and urgent. By contrast, if statehood and belonging to a people are essentially connected with territory, then territorial rights are relevant in obvious ways.

The reasoning above produces the following situation. Complete disappearance presupposes the necessity link thesis, whereas Partial disappearance denies it. The necessity link thesis is inherently plausible. As a consequence, Complete disappearance should be preferred to Partial disappearance. But Complete disappearance entails that disappearing countries do not create any issue concerning territorial states of collectives, be them states or peoples. If Complete disappearance holds, then the only possible issue related to territory involved in disappearing countries cases concerns individuals. If once sea submerged the whole territory of a state, the only entities remaining are individuals, then the only rights connected to territory violated by submersion should perforce be the territorial rights of individuals.

If sound, this line of reasoning implies that individual rights to territory are independent of territorial rights of collectives, as in disappearing countries cases the latter can hold without the former holding. Moreover, it seems that individual rights to territory cannot be denied; in so far as the argumentative strategies 1., 3., 4., and 5. listed above share the view that territorial rights can be only of collectives, reflection on climate refugees provides a ground to question them, and it is a reason to endorse 2. – i.e. the view that individuals have territorial rights, which states should protect or represent. Territorial rights for climate refugees requires a specific interpretation of Territorial rights, to the effect that territorial rights are held originally by individuals. Of course, this is not a knock-down argument in favour of an individualist approach to territorial rights. But further elements could be added, whose effect is of strengthening the case for individual territorial rights.

2.2. An argument in favour of the right to a territory interpretation of the 1951 Convention

I have already said that many authors questioned the claim that people displaced by climate change effects could be understood as refugees. I interpreted the 1951 Convention as meaning to protect a specific right of individuals—i.e. their right to have a territory to live in. A more detailed argument to give support to this interpretation can be formulated as follows:

I. State legitimacy – One, even though not the only, ground of state legitimacy is the fact that the state provides protection to the human rights of her citizens. In a sense, everyone has the right to have rights, and this can amount to having the right to be protected by a proper functioning state. (Buchanan 1999; 2004)

II. Citizenship, residency and protection from banishment – Every individual is entitled to live in the country of her citizenship, if because this is necessary to enjoy state protection. As a consequence, no state may lawfully banish its own
citizens. Indeed, possession and enjoyment of a right to residency is one of the marks of citizenship.\(^{10}\)

**III. Right to a territory** – From the premise of state protection not only the specific right to residency, but also a general right to a territory can be inferred. In other words, if every person has the right to be protected by her state, she has the right to be protected by a state, whatever it is. Then, if settlement in a territory is a necessary condition for state protection, then the right to live somewhere is a necessary condition in order to enjoy state protection.

**IV. Right to admittance** – If no state may lawfully banish its own citizens, as residency is needed to enjoy state protection, than no state could deny stateless people or refugees a more general right to have a territory to live in, when the residency in one's homeland is denied them by an unjust state. A person subject to a state persecution so hard that she can't help to expatriate is being denied her right to residency. This person is not longer under the jurisdiction of her state, and her state is not longer exercising a legitimate jurisdiction. It seems that a right to be admitted to other, legitimate, states is the only way to restore the lost right to a territory, understood as a right to residency under a legitimate state.

**V. Right to admittance for refugees** – When a state persecute its citizens so to make expatriation the only option to save their lives and goods, this amounts for the state to expel them. In virtue of **II.** and **IV.** above, refugees have right to be admitted to other legitimate states.

The argument stated above expands on elements already given in § 1.2. It is supposed to add details to the right to a territory interpretation of the 1951 Convention. Moreover, the argument fits with the some of the justifications of territorial states stated above, in § 1.3. In particular, the argument shares two claims presented in many territorial rights theories: first, states owe their legitimacy to their function in protecting the interests and rights of their citizen, and/or in realizing justice; second, in order to do this work, states need to exercise jurisdiction over a territory—accordingly, states have territorial rights because they need them in order to work properly.

A new element, though, is the following: It seems that individuals, too, have territorial rights, but of a different kind. Citizens have a right to a territory, i.e. a right to residency in, and occupancy of, a given portion of land, as this is necessary to lead a minimally decent life, under the protection ensured by the state. That the right to occupy a piece of land, with one's own home and anything connected, is needed to live a minimally decent life and to enjoy basic protection from the state seems to be a trivial point. However, this seems exactly what refugees lack. As said in § 1.3., refugees are not merely victims of state abuse. They are people persecuted by their state and fleeing their homeland for this very reason. Accordingly, it seems that they lack the right to inhabit their homeland, beyond all the other rights violated by their state abuse. And it seems plausible to say that persecution makes state protection impossible, at least insofar persecuted people are not admitted in another country, i.e. under another state's protection. Admittance makes possible state protection. But it makes possible state protection through residency, i.e. settlement on a territory. And state persecution was realized

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\(^{10}\) On expulsions from homeland as an issue of corrective justice see (Moore 2013).
through inducements to leave, i.e. through denial of the possibility, and the right, to stay. This is enough, I think, to claim that citizens have a right to a territory. More important, this is enough to grant to climate refugees a right to relocation.

This right is not primitive, or self-standing, though. It seems that it has an instrumental justification. It is to be conferred in order to give citizens the possibility of enjoying state protection, which is the means to have other rights. However, this does not reduce this right to other rights, nor is it enough to deny the relevance of this right to a territory. (Risse 2009, 290-1, 293-4)\(^{11}\)

I think that only this right can justify the standard reaction to the predicament of climate refugees. As said in the previous subsection, the territorial rights of states or collectives can hardly justify the claim that climate refugees have a right to relocation in other states—as a group or singularly. If climate refugees are considered as surviving states or peoples, this means that they can survive even without having proper territorial rights as states or peoples (i.e. rights of jurisdiction or self-determination). Accordingly, it is not clear that the most urgent reaction to climate refugees understood as peoples or states is to restore their territorial rights.

It might be argued that climate refugee states or peoples need a territory to continue living and working properly. However, this mean that territory is fundamental for peoples’ and/or states’ existence or good working. Again, if this is the case, then it is not possible that the territory of a state is completely destroyed and the state survives in exile. (The same holds for peoples.)

Then, it seems that climate refugees can only be individuals, not peoples or states. Remember that a well-known proposal, coming from the president of Kiribati, consists exactly in relocation of individuals in different places. The proposal assumes that climate refugees from Kiribati will be scattered individuals, and not a people in exile. (Risse 2009, 281)

It turns out, then, that the best interpretation of the 1951 Convention needs to posit an individual right to a territory, along with standard state territorial rights. This individual right is not a right to exercise jurisdiction, or to own resources. Rather, it is a right to have an occupancy of chunks of territory—of the portions of territory needed to live a decent life under state protection. It is a right emerging from the same source whence territorial rights of state derive. For this reason, the right to a territory interpretation can easily fit some territorial rights theories—such as 1. and 2. above. The only added element is that the right to a territory interpretation relies on two different kinds of territorial right: the right of states to exercise jurisdiction over their territory, in order to provide protection for human rights or to realize justice, and the right of individuals to a territory, namely to occupy the portions of territory needed to enjoy state protections.

This story strengthens the plausibility of individual territorial rights, along with the standard collective territorial rights. However, as we will soon see, those two kinds of right may be in opposition. This will create a serious tension within territorial rights theories of the standard kind.

\(^{11}\) Cp. also (Moore 2013, 429-31, 432-7, 440; 2014, 127-8; Stilz 2011a, 579)
2.2. Two arguments against the territorial rights of states

Climate refugees have distinctive features, which make them different with respect to ordinary refugees. In the account I am assuming, refugees lose their right to a territory as a consequence of the fact that state persecution makes necessary expatriation. By contrast, climate refugees lost their right to a territory in a more straightforward and literal way. They lost their territory, which is destroyed by submersion. The violation of their human rights, then, is a consequence of the violation of their right to a territory, not a cause of it. The destructive effects of climate on their territory, and the failure of their state to prevent them, robbed climate refugees of the territory they were entitled to, and of the state protection they would have enjoyed living in that territory.

This difference has normative consequences. Ordinary political refugees could claim not only a right to admittance and asylum, but also a right to return home, when state protection of their human rights will become possible again there. As a consequence, it might be argued that ordinary refugees have only a temporary right to asylum, whereas their strongest claim is to return their country. For this reason, asylum falls short of full and permanent citizenship.

Ordinary refugees have a status similar to temporary migrants. They should be admitted, but their admission is conditional and temporary, being dependent on the possible restoration of their right to live in the country of their citizenship. By contrast, climate refugees have no territory to come back into. As a consequence, they are entitled to claim a new territory, and permanent citizenship in it. (Risse 2009, 294; Blake 2002) This is an obvious consequence of the right to a territory interpretation of the 1951 Convention, if applied to climate refugees. Unfortunately, the claims of climate refugees can have a disturbing impact on standard territorial rights of states.

As reminded above, territorial rights are standardly understood as rights to exercise jurisdiction within a given territory. It might be argued that this jurisdiction should be exclusive, i.e. free from any interference from outside agencies. Even assuming that states cannot do everything they want, as they are bounded to realize justice and human rights within their territory, it seems obvious that any jurisdiction aimed at protecting human rights and realizing justice in a given territory should be exercised exclusively by the government in force. Exclusive jurisdiction does not exclude limits to state action. It is conceivable that state jurisdiction is exclusive in certain areas but subject to external controls in others. For instance, in the European Community, the economic policies of member states are controlled and implemented at the community level. However, national states are supposed to apply and enforce these decisions and regulations. Moreover, national governments take part in the community-level legislative and deliberative process. This is enough, I think, to claim that exclusive jurisdiction still holds. (Dietrich 2014, 176-7)

Another limit on the exclusive jurisdiction of states comes from the rights to be

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12 On the right to return of people in refugee camps or stateless after displacement, see (Moore 2013, 437)
conferring to refugees. Refugees lost protection from their state, and consequently the right to reside in their homeland. Restoration of those rights requires admittance in other countries, which will provide the necessary state protection. This might appear as a relaxation of state jurisdiction, in so far as it the control of the borders is at stake. However, this relaxation is not contradictory, as it emerges from the same source able to justify both individual and state territorial rights— i.e. protection of human rights. In other words, admittance of refugees cannot be regarded as a weakening of state territorial rights, as it derives from the same premise producing the justification of territorial rights.

This reasoning can be extended to climate refugees. But it should be reminded that the latter can claim permanent residency in their hosting states. This means that hosting states should limit their territorial rights not only concerning control on borders, but also with respect to the control and regulation of their population size. Climate refugees will add to the population size of their hosting states in a permanent way, with effects on future generations. This additional relaxation of territorial rights of states might be somewhat paradoxical.

Consider the following argument, to be called the over-population argument:

- **Factual limits of state protection and population size** – Beyond certain limits of population size, a state's capacity of efficient protection against possible violations of the human rights of its citizens could be seriously impaired. To put it otherwise, a state's capacity to protect human rights of its citizens is inversely proportional to the population size. Decentralization and subsidiarity can enlarge the efficiency of state protection. However, it might be argued that there is a threshold of population size beyond which even a de-centralized and imperial-like state loses its control of substantial parts of its territory.\(^\text{13}\)

- **Acquisition of jurisdictional autonomy** – Lack of efficient state protection could be the ground for claiming jurisdictional autonomy. The portion of territory where the extra-population going beyond the state's potential for control lives gains the right to claim autonomous jurisdiction. This can be done either through secession from the rest of the admitting state, or by establishing a federative framework (where the new entity has an exclusive jurisdiction over its territory, but exercises it within a joint structure with the rest of the original state).\(^\text{14}\)

- **Loss of territorial integrity** – Accordingly, a state hosting large masses of climate refugees can as a consequence loss its territorial integrity, by losing a part of its territorial jurisdiction.

The argument above shows a way in which territorial rights of climate refugees could limit, and even preventing, the territorial rights of admitting states. It seems

\(^\text{13}\) In a sense, a population growth deriving from admittance of large masses of refugees denies a state jurisdictional autonomy by the very definition of it, as it seems that it is part of being an autonomous state to decide its own population size; see (Miller 2007, 128; Rawls 1999, 117–8). A discussion of this view is in (Dietrich 2014, 184-5).

\(^\text{14}\) Similar claims are made in (Dietrich 2014, 177, 178, 180, 181-9). However, Dietrich seems not to consider the relevance of the factual limits of state protection. On secession in similar cases, see (Buchanan 2004, 350–71)
that at least in certain cases, then, the two kinds of rights identified at the end of the previous section cannot be harmonized, but are rather doomed to conflict. Indeed, this conflict can be systematic, as it is shown by the following argument, to be called the outside interference argument:

- **Dispersed responsibility chains for climate change** – Events such as the submersion of island-states are long-term effects of climate change, which in its turn obtains at the end of long, multifarious and dispersed chain of causes and effects. For this reason, responsibility for climate change is historical and collective. If climate change effects are to be regarded as wrongs, then there is no single wrong-doer. The wrongs provoked by climate change result out of unintentional and tiny contributions to the wrong-makin, whose causal salience is difficult to establish. In particular, current levels of emissions are due to the intertwined present and past conducts of millions of individuals on earth. (Risse 2009, 282)

- **Outside interference** – Events that are very likely to force certain groups of people to flee their countries are collectively brought about by many people and states. Accordingly, the admitting states have their situation caused by the impact of actions of many people around the world. Their situation, then, is strongly affected by outside interferences. In a sense, this makes states unable to completely self-determine themselves. States who should bear the burdens of climate refugees are in this sense dominated by all the other states and groups, which have caused climate change. In particular, their loss of jurisdiction is brought about by the action, or inaction, of other states and peoples. This is another way in which the existence of climate refugees seriously undermines state exclusive jurisdiction.

The outside interference argument makes evident that territorial rights as rights to exclusive jurisdiction over a territory are not merely limited by the duty to respect human rights. There are also heavy external constraints on exclusive jurisdiction. Those constraints derive from collectively performed wrongs. Admitting states, and potentially each state, could lose control of its territory as a consequence of collective wrongs whose responsibility is of all the other states.

Together, the over-population and the outside interference arguments show that there is a systematic, and unavoidable, tension between collective or state territorial rights and individual rights to a territory. In particular, climate refugee's rights to a territory jeopardize admitting states' territorial rights. Hence, we face the following dilemma: either climate refugees should be denied admittance (or at least they should be denied admittance beyond a given threshold); or territorial rights should be declared void.

This is a paradoxical conclusion, as it seems that territorial rights descend from the same source whence individual rights to a territory for climate refugees derive. In other words, the moral imperative to guarantee human rights protection for all requires that states should have territorial rights. The same moral imperative, in

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15 Cp. (Moore 2014, 133)
presence of disappearing countries, requires admittance for climate refugees. But such admittance could jeopardize the standing of state territorial rights. Thus, either a new doctrine of climate refugees is provided, or a new account of the territorial rights of states is to be framed.

3. Concluding remarks (disaggregation strategies)

At the outset, I stated the following three theses:

*Territorial rights* – Individuals, people and/or states have territorial rights, i.e. they have a bunch of rights connected to the occupation of a bounded territory.

*Climate refugees* – People forcefully displaced from disappearing countries (from now onwards, *climate refugees*) have a right to compensation.

*Territorial rights of climate refugees* – In particular, climate refugees suffer violations of their territorial rights; hence, compensation for them should mainly take the form of the restoration of their rights to a territory, though relocation in a different state.

Arguments employed in § 2 should be able to show that Climate refugees can be supported by making appeal to a version of Territorial rights, i.e. to the idea that individuals have a right to a territory. Climate refugees and Territorial rights, so interpreted, give support to Territorial rights of climate refugees. However, the latter provokes a serious revision and qualification of Territorial rights, because it turns out that if climate refugees have right to a territory, this comes in jeopardy of the territorial rights of hosting states. If one assumes that state territorial rights are needed to protect citizens' rights, including citizens' right to a territory, it might happen that granting territorial rights to climate refugees weakens, or however limits, the right to a territory of citizens of the hosting states. Accordingly, it seems that Territorial rights of climate refugees requires a drastic qualification, or revision, of Territorial rights. In other words, current theories of territorial rights provide necessary tools to deal with the predicament of climate refugees. But at the same time, justifying admission for the climate refugees needs a radically different view of territorial rights.

References


