



**Royal University of Law and Economics**

**Final Report on**  
**Global Readiness: Climate Refugee Legal**  
**Protection and Status**

**Student:**

**Ms. RAKSMEYTHIDA OUM**

**Academic Advisor:**

**Dr. RAYMOND LEOS**

**International Program**  
**Bachelor's Degree in International Relations**  
**Cohort 7**  
**Year of Submission: 2019**

## **ACKNOWLEDGMENT**

This thesis would not have been possible unless there are commitment and time contribution from seniors, classmates, professors, and mainly my advisor Dr. RAYMOND LEOS. It is a pleasure to thank those who made this possible from the first day until this study is finally published. I want to express my deepest gratitude to my advisor, professors, seniors, colleagues, family, and friends who give ideas, guidance, emotional support, and motivation.

To family, with all the love and respect, I cannot thank you enough for the unconditional love and time in raising me for over twenty years and by being a part of my life through thick and thin, from a kindergarten schoolgirl to this future graduate student.

To all my teachers and lecturers, I cannot list all of your names down. Though all your effort, time, and knowledge to brighten up my studying journey are cherished. I am blessed to be taught and surrounded by your presence.

To International Relations Department of Royal University of Law and Economics, I appreciate your dedication in providing academic and technical support during my four-year studies on the campus.

## **ABSTRACT**

This paper describes the definition of climate refugee and differentiating between the term ‘migrant’ and ‘refugee’ as well as the word ‘environmental refugee’ and ‘climate refugee.’ In later chapters, there will be discussions about the relevant international law applicable and the development of the international legal framework on climate refugee protection. More importantly, after discussions in both local and global approach toward this topic, we will focus mainly on two study cases in Bangladesh and Tuvalu.

# TABLE OF CONTENT

ACKNOWLEDGMENT .....	i
ABSTRACT .....	ii
TABLE OF CONTENT .....	iii
LIST OF ABBREVIATIONS .....	v
INTRODUCTION .....	1
Overview .....	1
1. Problem Statement:.....	2
2. Objectives: .....	3
3. Significance of this Study .....	3
4. Scope:.....	4
5. Methodology:.....	4
CHAPTER I: CLASSIFICATIONS OF CLIMATE CHANGE-RELATED MOVEMENT .....	5
1.1. Origins of Human Mobility .....	5
1.1.1 Socio-economic Movement.....	5
1.1.2 Environmental-related Movement.....	5
1.2. Terminology Explanations .....	7
1.3. Migration and Asylum.....	8
1.4. Climate Refugee vs Environmental Refugee.....	12

CHAPTER II: STATE APPROACHES .....	16
2.1. State Policies toward Climate Change Movement .....	16
2.1.1. Australia .....	16
2.1.2. Sweden .....	16
2.1.3. New Zealand.....	17
2.1.4. The United States.....	19
2.2. Criticism.....	20
CHAPTER III: GLOBAL APPROACHES .....	22
3.1. Relevance Existed International Legal Instruments .....	22
3.2. Development of International Legal Frameworks on Climate Movement.....	31
3.3. Discussions within the UN and EU on Climate Change and Human Mobility.....	37
CHAPTER IV: CASE STUDIES.....	43
4.1. Bangladesh.....	43
4.2. Tuvalu .....	46
CONCLUSION .....	52
RECOMMENDATION .....	55
BIBLIOGRAPHY	

## **LIST OF ABBRIVIATION**

COP21:	21 <sup>st</sup> Conference of the Parties
DG:	Directorate-General
ECHR:	European Convention on Human Rights
EDF:	European Development Fund
EU:	European Union
ICCPR:	International Covenant on Civil Political Rights
ICESCR:	International Covenant on Economic, Social, and Cultural Rights
IDP:	Internal Displaced Persons
IPCC:	Intergovernmental Panel on Climate Change
LPR:	Legal Permanent Residents
OHCHR:	Office of the High Commissioner on Human Rights
OISDSP:	Outer Island Social Development Support Programme
PAC:	The Pacific Access Category
R2P:	Responsibility to Protect
SFDRR:	Sendai Framework on Disaster Risk Reduction
TPS:	Temporary Protected Status
UN:	United Nations
UNCCD:	United Nations Convention on Combating Desertification
UNICEF:	United Nations Children’s Emergency Fund
UNEP:	United Nations Environment Programme
UNFCCC:	United Nations Framework Convention on Climate Change
UNHCR:	United Nations High Commissioner for Refugee
UNU:	United Nations University

# INTRODUCTION

## Overview

Climate-related extreme events and natural disasters can cause environmental refugees. Climate change has been known to account for the displacement of people in most vulnerable affected areas. Each year, millions of people are forced to leave their homes due to natural disasters and climate change related events. The number of climate displaced persons started to outrun the number of those who are displaced by conflicts in 2001 for the first time.<sup>1</sup> According to the United Nations of Environment Programme (UNEP), there was an estimation in which about 50 million environmental refugees could exist in Africa alone by 2060.<sup>2</sup> There are controversial debates surrounding climate change issue; nonetheless, the subject of people being displaced has been paid less attention. There is a lack of international agencies presence surrounding this issue in order to legally protect those who are involuntarily displaced by the effects associated with that phenomenon.

In several international policy agreements such as those under the Sendai Framework for Disaster Risk Reduction and the Sustainable Development Agenda and the United Nations Framework Convention on Climate Change (UNFCCC) system, climate-related disasters have been viewed as global motions of human displacement.

Hence, all relevant agencies must adequately prepare for the massive displacement mechanism to ensure human rights are protected within local, regional, and international levels.

---

<sup>1</sup> “Environmentally Displaced People, Understanding the Linkages between Environmental Change, Livelihoods and Forced Migration.” *Refugee Studies Center*, Nov. 2008, [www.rsc.ox.ac.uk/publications/policy-briefings/RSCPb1-Environment.pdf](http://www.rsc.ox.ac.uk/publications/policy-briefings/RSCPb1-Environment.pdf). (accessed July 03, 2019).

<sup>2</sup> *Ibid.*

It is necessary to develop policies for climate-related movement for countries that are impacted as well as potential host countries that most likely to receive them.

This study will define climate change-related movement terms, other relevant existing international instruments along with some case studies in Bangladesh and Tuvalu, and recommendations in which suggest further attention toward the creation of international legal protection and status for climate change displaced persons.

## **1. Problem Statement:**

Under the Intergovernmental Panel on Climate Change (IPCC), climate change is perceived as a “threat multiplier.” Until now, there is an average of 21.5 million displaced people who leave their homes each year on the cause of rapid-onset climate-related incidents since 2008. A statement by the IPCC expressed that “climate-related hazards exacerbate other stressors, often with negative outcomes for livelihoods, especially for people living in poverty.”<sup>3</sup> This threat impacts the lives of people, especially those who are in poverty, reductions of their crop production, increased in food price as well as the destruction of homes.

Climate change impacts are already being seen through the increasing of drought and heavy rainfall, sea-level rising, and global warming.<sup>4</sup> More significant numbers of people are being forced to move or flee from the unbearable situation.<sup>5</sup>

The concern of how many people will continue to be displaced by climate change and what is the international exact agreed definition for climate refugees. Are they voluntary or forced,

---

<sup>3</sup> “13-Livelihoods and Poverty”, *Intergovernmental Panel on Climate Change*. 2018.

[https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-Chap13\\_FINAL.pdf](https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-Chap13_FINAL.pdf). (accessed July 03, 2019).

<sup>4</sup> Jessica Blunden and Derek Arndt, eds., *State of the Climate* (2016), 98.

<sup>5</sup> “Climate Change and Displacement in the 21st Century.” *The United Nations High Commissioner for Refugee*. The Nansen Conference, June 5-7, 2011, <https://www.unhcr.org/4ea969729.pdf>. (accessed July 03, 2019).



temporary or permanent, internal or cross-border? Also, the differentiating between migrants and refugees.<sup>6</sup>

A potential driver to human displacement can also be due to the development projects that are supposed to help mitigate and adapt to climate change. For instance, mitigation or adaptation projects, such as large-scale land acquisitions for forest conservation or government-led planned community relocations, have also caused displacement for former residents there, without fully respecting their human rights.

## **2. Objectives:**

- To study about the issue itself surrounding climate change and identify potentially applicable terms for climate-related movement
- To explore relevant international legal protection mechanisms for climate-related displaced persons.

## **3. Significance of this Study:**

This paper seeks to reveal whether existing international frameworks are covering climate refugees' legal protection or not and to demonstrate how state and global approaches toward the case of people forced to move in this issue. If one of these factors can be improved, then the others will likely improve as well in the ability for a country to become readily prepared to cope with the impacts of climate change.

---

<sup>6</sup> Jane McAdam, *Climate Change, Forced Migration and International Law* (New York: Oxford University Press, 2012), 5.

#### **4. Scope:**

A brief report of scholars studies and analysis on human mobility and climate change on the development of international legal frameworks for people on the move, along with case studies in Bangladesh and Tuvalu.

#### **5. Methodology:**

In this study, all of the information was conducted from research articles, scholar books, government institution, non-governmental organizations, and international organizations.

# CHAPTER I: CLASSIFICATIONS OF CLIMATE CHANGE-RELATED MOVEMENT

## 1.1. Origins of Human Mobility

### 1.1.1 Socio-economic Movement

In many cases, movements occur because of economic, social, and health reasons. Global warming and sea level rise significantly challenge the survival of living entities on this planet. The most noticeable consequence is forced migration. In most cases, migration is the last alternative when an adaptation strategy for these changes fails.

Human mobility is begun by various aspects: people move to flee from conflict or social persecution, seek for better employment opportunities, or in some cases due to natural disasters and environmental degradation that have an impact on their incomes and livelihood.<sup>7</sup>

### 1.1.2 Environmental-related movement

Climate change response movement is a standard approach for human adaptation.<sup>8</sup> According to science estimates, the number of people likely to move owing to climatic reasons – sea level increase, enhanced water scarcity, desertification, .etc. - Ranges between 50 and 350 million by 2050.<sup>9</sup>

Millions of individuals around the globe are compelled to relocate or escape each year owing to natural hazards in their settings, and many of these risks are associated with extreme weather conditions. Many of the countries that most sensitive to climate change effects are

---

<sup>7</sup> Jianfa Shen, *Increasing Internal Migration in China from 1985 to 2005: Institutional Versus Economic Drivers* (Hong Kong: Elsevier, 2012) 1-7.

<sup>8</sup> “Climate Change Displacement and International Law,” *The United Nations High Commissioner for Refugee*. December 8, 2010, <http://www.unhcr.org/4d05ecf49.pdf>. (accessed July 03, 2019).

<sup>9</sup> Report of the Secretary-General, “Climate Change and its Possible Security Implications,” *The United Nations High Commissioner for Refugee*. September 11, 2009, <http://www.unhcr.org/refworld/pdfid/4ad5e6380.pdf>. (accessed July 03, 2019).

developing nations that produce very little to global greenhouse gas emissions that cause climate change and related effects. It seems unreasonable that these are the individuals who suffer the most from the climate change effects. A significant contributing factor to this is the geographic location. Coastal regions and islands, for instance, may be particularly vulnerable to effects such as cyclones and rising sea levels.

Events related to climate change are recognized in two distinct terms: slow and rapid-onset disasters. Sudden-onset disasters are disasters such as earthquakes, hurricanes, and floods, for which there is little or no warning. Slow-onset disasters are disasters that take a long time to create emergency consequences like drought, desertification, and melting of permafrost.

As the United Nations University in 2015 stated, climate change could, directly and indirectly, impact human mobility through four primary paths globally:

- Changed frequency and severity of weather-related extremes (heat waves, cyclones, and storms) destroying infrastructure and living conditions, forcing displacement.
- Increasing sea levels, permafrost, desertification, and other modifications in a climate that make regions uninhabitable for humans.
- Changes in regional weather patterns lead to long-term drying cycles that change access to essential resources and the sustainability of a variety of livelihoods related to the environment.
- Competition over water and soil resource reduction or changes that worsens pressure and contributes to future conflicts of scarcity.<sup>10</sup>

---

<sup>10</sup> “Changing Climate, Moving People: Framing Migration, Displacement and Planned Relocation,” *The United Nations University*. June, 2013, <https://collections.unu.edu/eserv/UNU:1837/pdf11213.pdf>. (accessed July 03, 2019).

## 1.2. Terminology Explanations

There are countless titles and definitions provided to this specific form of refugee, including refugees from the environment, refugees from climate change, migrants from the environment, migration from climate change and migrant from the environment.

- Migration: the process of movement, either temporarily, seasonally or permanently, within or across borders. Migration is frequently linked to an element of selection and is deemed voluntary in this article.

- Displacement: most frequently relates to cases where there is no option but to move within or across boundaries, either temporarily or permanently. This document considers displacement to be compelled in nature, e.g., in the event of severe flooding or political unrest, forcing individuals out of their homes.

One of the commonly accepted environmental refugee definitions was “persons who no longer gain a secure livelihood in their traditional homelands because of what are primarily environmental factors of unusual scope.”<sup>11</sup> This definition has been updated “people who can no longer gain a secure livelihood in their homelands because of drought, soil erosion, desertification, deforestation, and other environmental problems, together with the associated problems of population pressures and profound poverty.”<sup>12</sup>

- Planned relocation: a type of organized motion typically instigated, monitored, and conducted by the government. Ideally, with the informed consent of the society involved and with appropriate regulations to restore life and livelihoods, it is conducted transparently. It is most probable to be permanent and so unique, rather than seasonal, but it can also happen where

---

<sup>11</sup> Norman Myers, *Environmental Refugees: An Emergent Security Issue* (Prague: 13<sup>th</sup> Economic Forum, 2005), 3.

<sup>12</sup> *Ibid.*, 1.

individuals or groups of individuals are transferred from temporary residence locations. Planned relocation is conducted to safeguard individuals from disaster-related hazards and impacts, including climate change effects. It is not without controversy, however, as other non-climate variables may motivate a state to relocate individuals, including changes in land use or extraction of natural resources.<sup>13</sup>

As of the United Nations High Commissioner for Refugees (UNHCR), because of the combined effects of conflict, climate, and financial pressures, it is becoming increasingly difficult to categorize displaced people.<sup>14</sup> The degree to which this can be said ‘increasing number of people [are] displaced as a direct result of climate change’<sup>15</sup> that is why it is contentious. This does not mean that the climate-change-related displacement phenomenon is not genuine, but instead that it is much more complicated than is often thought.

In this study, we have chosen the word 'Climate Refugee' because environmental disasters caused by global warming are the actual cause of mass migration and reflect the urgency, seriousness and worldwide accountability of this problem.<sup>16</sup>

## **1.3.Migration and Asylum**

### **Migration**

In the context of the increasingly pressing political discussion on climate and migration/asylum, the study has attempted to find out whether or not environmental change or stressors

---

<sup>13</sup> Sarah Stapleton, Rebecca Nadin, Charlene Watson and Jan Kellel, *Report: Climate Change, Migration and Displacement (The Need for a Risk-informed and Coherent Approach)* (Oversea Development Institute and The United Nations Development Programme, 2017), 6.

<sup>14</sup> António Guterres, “Conflicts Fuelled by Climate Change Causing New Refugee Crisis, Warns UN,” interviewed by Julian Borger. *The Guardian*, June 17, 2008, <https://www.theguardian.com/environment/2008/jun/17/climatechange.food>. (accessed July 03, 2019).

<sup>15</sup> Angela Williams, *Turning the Tide: Recognizing Climate Change Refugees in International Law* (Law & Policy 30, 2008), 502-504.

<sup>16</sup> Saudi Anwer, *Analysis: Climate Refugees in Bangladesh (Understanding the Migration Process at the Local Level)* (Stuttgart: Brot fur die Welt, 2012), 8.

can cause human migration or force it. It is common to identify a ‘debate on climate refugee’, in which two schools of thought are highlighted. In one, the link between environmental change and migration is thought to be linear and straightforward, while in the other, it is thought to be messy and complicated.

The conceptualization of the environmental refugee attempts to differentiate is more suitable whether they were responding to rapid- or slow-onset events,<sup>17</sup> and How can environmental refugees be discerned, fleeing environmental disasters? From migrants who willingly migrate in an environmentally stressed context.

It is necessary to differentiate between ‘forced’ and ‘voluntary’ migrants and therefore whether the title ‘environmental refugee’ is suitable,<sup>18</sup> Who separates migrants from refugees by distinguishing between forced and voluntary movement, as determined by the nature of the shift in the environment. The disagreement concerns the use of the word refugee from the environment and not the connection between environmental change and human migration.

The concept of driving migration conduct by financial motivations can be traced back to Ravenstein himself. He believed that “none of [the] currents [of migration] can compare in volume with that which arises from the desire inherent in most men to better themselves in material respects.”<sup>19</sup>

The UNFCCC Cancun Adaptation Framework recognizes both displacement and migration as types of adaptation, together with ‘planned relocation.’<sup>20</sup> The IOM further described as follows:

---

<sup>17</sup> Suhrke Astri, *Pressure Points: Environmental Degradation, Migration and Conflict. Workshop on Environmental Change, Population Displacement, and Acute Conflict* (Ottawa: University of Toronto and The American Academy of Arts and Sciences, 1993).

<sup>18</sup> Hugo Graeme, *Environmental Concerns and International Migration*. (SAGE, 1996), 105-131.

<sup>19</sup> Georg Ravenstein., *The Laws of Migration* (Wiley for the Royal Statistical Society, 1889), 27-35.

<sup>20</sup> The United Nations Framework Convention on Climate Change “Cancun Adaptation Framework”, par. 14(f).

*In simple terms, adaptation refers to any human response taken to cope with changes in the external environment in order to survive these impacts with minimal change and improve living conditions in a given habitat. When people decide or are forced to move due to environmental and climate change – whether sudden or slow – their mobility is an adaptation strategy that allows them to minimize harm for themselves and/or improve their overall lives.<sup>21</sup>*

Where *in situ* adaptation attempts are insufficient to decrease the hazards they face, scheduled, and voluntary migration that protects their dignity and respects their human rights can be a favorable approach for climate change adaptation. Movement-related to the adverse effects of climate change can be motivated by complex and interconnected drivers, including the inability to cope with the ongoing stresses of increased climate variability, planned adaptation measures, and natural disasters.<sup>22</sup>

Besides, migration is now being re-conceived as a 'chance,' providing many appealing co-benefits. A dominant player in growth policy and a pioneer in climate-induced migration, the Asian Development Bank claims that:

*The countries of Asia and the Pacific can choose to turn the threat of climate-induced migration into an opportunity to improve lives, advance the development process, and adapt to*

---

<sup>21</sup> Dina Ionesco, "Migration as an Adaptation Strategy to Climate Change," *International Organization of Migration*. November 30, 2015, <http://weblog.iom.int/migration-adaptation-strategy-climate-change> (accessed July 03, 2019).

<sup>22</sup> "Discussion Paper, Human Rights, Migration, and Displacement Related to the Adverse Impacts of Climate Change," *Office of the United Nations High Commissioner for Human Rights*. Drafted by Mary Robinson Foundation - Climate Justice in Consultation with the Core Drafting Group, September 30, 2016, <https://www.ohchr.org/Documents/Issues/ClimateChange/EM2016/HumanRightsMigrationDisplacement.pdf>. (accessed July 03, 2019).



*long-term environmental change by altering development patterns, strengthening disaster risk management, investing in social protection, and facilitating the movement of labor.*<sup>23</sup>

However, that would be more reasonable to use migration as an adaptation only for slow-onset climate-related hazards include drought, desertification, salinization, ocean acidification, glacial retreat, and changing trends in seasons. Although not depicted in the information on displacement of disasters, slow-onset risks play a part in convincing individuals to migrate when other mechanisms, such as public reactions, are insufficient to allow them to remain in location or when there are few choices for diversification of livelihoods<sup>24</sup>. Such risks, often with lengthy warning times, it can cause individuals to migrate temporarily or permanently when living conditions. Later, it can no longer be supported or when regions become uninhabitable owing to hotter conditions, drier seasons or long-term physical loss of soil and ecosystem assets, and this may involve more than just migration mechanisms, and immediate asylum will later be required because of the state's demise.<sup>25</sup>

## **Asylum**

The definition of refugee refers only to individuals who have already crossed an international border, but many of those displaced by climate change are 'displaced internally' (IDPs). Although UNHCR is the lead agency for IDPs, it only deals with those who are compelled to relocate because of a dispute.<sup>26</sup>

---

<sup>23</sup> "Addressing Climate Change and Migration in Asia and the Pacific," *Asian Development Bank*. 2012, <https://www.adb.org/sites/default/files/publication/29662/addressing-climate-change-migration.pdf>. (accessed July 03, 2019).

<sup>24</sup> Susana Adamo, *Vulnerable People in Fragile Lands: Migration and Desertification in the Drylands of Argentina*. (Austin: University of Texas, 2003).

<sup>25</sup> Jason Bremner and Lori Hunter, "Migration and the Environment", *Population Reference Bureau*. June, 2014, <https://assets.prb.org/pdf14/migration-and-environment.pdf>. (accessed July 03, 2019).

<sup>26</sup> Jane McAdam, "Climate Change 'Refugees' and International Law" *NSW Bar Association*. October 24, 2007, <http://www.nswbar.asn.au/circulars/climatechange1.pdf>. (accessed July 03, 2019).

Sudden-onset climate-related hazards lead to big numbers of displaced persons annually by evacuating and moving out of the manner of harm<sup>27</sup>. Such risks have recently displaced more than 24 million individuals in 2016 and have, overall, displaced 32 times more individuals than other geophysical risks such as earthquakes and three times more individuals fleeing war.<sup>28</sup> Sudden-onset hazards include storms (such as typhoons), higher temperatures, and flooding.

Refugees in the nation to which they escaped may also be the cause of some environmental issues. It can trigger overcrowding if a significant amount of refugees enter and stay in the same region, leading to more issues. Overcrowding can lead to resource shortages, war and social disputes, private freedom limitations, air and water pollution, unfortunate living circumstances, disease transmission, habitual devastation, and restricted land accessibility.

In promoting the recognition of climate refugees as an indicator of the development issues facing Bangladesh, Islam claims that there is a distinction between people who migrate in pursuit of a better life and migrants who have to leave a region for fear of dying as a consequence of environmental destruction.<sup>29</sup> Hence, adequate policies should be created to fit each situation in response to their human rights.

#### **1.4. Climate Refugee vs. Environmental Refugee**

The bio-political discourse leads to a request for a new legal climate refugee status which would protect migrants caused by climate change, including the right to *non-refoulement* and exposure to humanitarian assistance. These rights cannot be given to most individuals displaced

---

<sup>27</sup> Susana Adamo, "Environmentally Induced Population Displacements," *The Center for International Earth Science Information Network*. 2009, <http://srdis.ciesin.columbia.edu/documents/envirnoninduced-s.adamo-IHDPupdate-2009.pdf>. (accessed July 03, 2019).

<sup>28</sup> "Internal Displacement by Country Database," *Internal Displacement Monitoring Centre*. 2017, <http://www.internal-displacement.org/database>. (accessed July 03, 2019).

<sup>29</sup> Muinul Islam, "Natural Calamities and environmental refugees in Bangladesh, Refuge" *York University*. 1992, <file:///C:/Users/Thida%20Oum/Downloads/21639-Article%20Text-22051-1-10-20090424.pdf>. (accessed July 03, 2019).

by climate change under the Refugee Convention as the Convention involves political persecution as the grounds for providing protection. Suggested extension of the Refugee Convention to acknowledge ‘environmental persecution,’ Or the creation of a new legal instrument as an independent convention<sup>30</sup> or as a protocol to the UN Framework Convention on Climate Change<sup>31</sup>. Since individual choices on eligibility for climate refugee status are hard to take, Biermann and Boas propose that the whole areas be declared threatened by climate change and propose that their populations be resettled jointly beforehand. Such discourse could mobilize humanitarian aid and humanitarian military intervention in the name of the human rights of the communities affected if orderly leadership fails or comes too late.

Inside a 1985 study for the United Nations (UN) Environment Programme, El-H Innawi used the term 'environmental refugee' as a means of describing individuals 'compelled to leave their traditional habitat momentarily or permanently due to a marked environmental disturbance (natural and/or human-induced) that threatened their existence and/or severely affected the quality of their lives'.<sup>32</sup>

According to some researchers, Bilsborrow (1992)<sup>33</sup>, the word ‘environmental refugee’ was criticized for the way it provided foremost opportunity for modifications in the physical setting in human migration choices. This, she claims, disregards the part that other variables might play in the process. McGregor (1992) argued that the word rejects any agency or capacity to withstand or adapt to modifications in the physical setting of migrants. Comparably Suhrke (1992) criticized El-Hinnawi (1985)<sup>34</sup> and others for categorizing all types of motion as

---

<sup>30</sup> Bonnie Docherty and Tyler Giannini, *Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees* (Harvard Environmental Law Review, 2009), 349–403.

<sup>31</sup> Frank Biermann and Ingrid Boas, *Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees* (Global Environmental Politics: 2010), 60–88.

<sup>32</sup> Essam El- Hinnawi, *Environmental Refugees* (United Nations Environment Programme, 1985), 4.

<sup>33</sup> Richard Bilsborrow, *Rural Poverty, Migration, and the Environment in Developing Countries: Three Case Studies*. (Washington: The World Bank, 1992).

<sup>34</sup> Essam El- Hinnawi, *Environmental Refugees* (United Nations Environment Programme, 1985), 4.

refugees (despite differentiating them in spatial and temporal terms) As one or the other, it suggests that the concept of an environmental refugee undermines the legal term refugee as described in the 1951 Convention.<sup>35</sup>

These modifications (climate change impact) will remain in the future, but the impact scale is directly linked to the number of greenhouse gasses that the earth is still emitting. It has been determined by the IPCC “extremely likely that human interference with the climate system is occurring and climate change poses risks for the human and natural system.”<sup>36</sup>

Definition of environmental refugees by the Nansen Initiative, which is a “state-led consultative process to build consensus on a protection agenda addressing the needs of people displaced across borders in the context of disasters and the effects of climate change.”<sup>37</sup>

Environmental refugee was defined by The United Nations Environmental Program (UNEP) as “people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life” (1985).

UN Framework Convention on Climate Change (UNFCCC, 1992) stated:

*“A change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.” (Article 1)*

---

<sup>35</sup> The 1951 United Nations Convention Relating to the Status of Refugees.

<sup>36</sup> “Climate Change 2014: Synthesis Report,” *Intergovernmental Panel on Climate Change*. 2015, [https://www.ipcc.ch/site/assets/uploads/2018/05/SYR\\_AR5\\_FINAL\\_full\\_wcover.pdf](https://www.ipcc.ch/site/assets/uploads/2018/05/SYR_AR5_FINAL_full_wcover.pdf). (accessed July 03, 2019).

<sup>37</sup> “Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change,” *The Nansen Initiative*. December, 2015, <https://nanseninitiative.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf>. (accessed July 03, 2019).

The term ' environmental refugees ' and ' climate refugees ' has become commonly used despite the reality that there is no legal status for individuals displaced by environmental change and proof that these individuals are unlikely to cross any frontier and will stay internally displaced.<sup>38</sup> However, this claim also applies to those disasters such as earthquake, drought, and flood. Not applicable to events such as sea level rising or “sinking islands” in the coastal area.

---

<sup>38</sup> Cord Jakobeit and Chris Methmann *'Climate refugees' as a dawning catastrophe? A critique of the dominant quest for numbers* (Berlin: Springer, 2012), 301–314.

## CHAPTER II: STATE APPROACHES

### 2.1. State Policies toward Climate Change Movement

#### 2.2.1. Australia

The Australian government has long identified that forced relocation, and displaced persons pose a major international challenge for refugees and asylum-providing countries. It is because there is a more restricted scope for the Refugee Convention. As the Australian High Court noted, the 'persecution' requirement limits the 'humanitarian scope' of the Refugee Convention and does not provide universal security for asylum seekers. Whether epidemics, natural disasters or famine are disastrous, an individual fleeing them is not a refugee under the terms of the Convention.<sup>39</sup>

#### 2.2.2. Sweden

Throughout the beginning of the 2000s, researchers and policymakers championed Western emitters' obligation to 'save' climate migrants and give them refugee status without any legal tools to grant refugee rights.<sup>40</sup>

Even though there is scope for nations such as Finland and Sweden to take into account environmental degradation in evaluating asylum claims in domestic law. Swedish law on asylum includes a provision extending protection to individuals 'incapable of returning to their nation of origin due to an environmental disaster'.<sup>41</sup> This is part of the supplementary security system in Sweden, which usually leads to permanent residence. Also, but outside the supplementary protection framework, a (usually continuous) residence license may be given

---

<sup>39</sup> Applicant A (n 36) 248 (Dawson J).

<sup>40</sup> Chris Methmann, *From 'fearing' to 'empowering' climate refugees: Governing climate-induced migration in the name of resilience* (Security Dialogue, 2015), 51-68.

<sup>41</sup> Aliens Act 2005: 716, Ch 4, s 2(3).

due to an extremely distressing scenario. However, it has not been used to date. In any event, it is uncertain whether this would apply to individuals displaced for reasons related to climate change since it seems that it was ever designed only to cover individuals fleeing specific environmental disasters like Chernobyl, rather than more usually. Kolmannskog and Myrstad observe that the drafting history shows debate of the concept that environmental displacement could include so-called 'sink' island states and other longer-term situations, but a commentary on the clause as enacted clarified that it was designed only for sudden disasters and would only be accessible if there were no alternative inner flight.<sup>42</sup>

### **2.2.3. New Zealand**

The Pacific Access Category (PAC) of New Zealand deserves a short mention here considering widespread misconceptions about its intent. The PAC visa was established in 2002. It was focused on a current Samoan system and substituted earlier job schemes and visa waiver schemes for Tuvalu, Kiribati, and Tonga individuals.<sup>43</sup> The above visa was erroneously praised as a 'protection' reaction in media and scholarly circles to individuals at risk of climate change-related displacement in the Pacific. Even though the scheme has been expanded to Tuvalu people following a plea from the government of that country for unique immigration help to allow some of its people to relocate, it is a traditional migration program rather than one that takes into account the need for international protection.

From July 2002 to August 2011, it shows that an average of 1,897 apps was submitted each year by individuals from Kiribati and 419 from Tuvalu, with 3,226 from Kiribati in 2011 and 456 from Tuvalu.<sup>44</sup> The quota for Kiribati was unmet only in the first year of the system, with

---

<sup>42</sup> Proposition 1996/97: 25, 100–1 in Kolmannskog and Myrstad (n 16) 323. Ch 3.

<sup>43</sup> Lianne Dalziel, *Government Announces Pacific Access Scheme* (Beehive, December 2001).

<sup>44</sup> See Immigration New Zealand Statistics: Ballot System, <http://www.immigration.govt.nz/NR/rdonlyres/28F41153-42CF-402B-B507-7BF31FC4C37C/0/B1BallotReportReceivedandDecided06JUL2011.pdf>. accessed July 03, 2019. These figures

51 visas given and only 64 visas given to Tuvaluans in 2004. In most years, at least 10–15 additional visa grants exceeded the 75 seats; in 2010, I-Kiribati was granted a record 125 visas and Tuvaluans 120.<sup>45</sup> The program is well known in Tuvalu and Kiribati: it was mentioned and welcomed by almost every individual surveyed, although some improvements could also be achieved.<sup>46</sup> The system allows an annual quota of 75 Tuvalu and Kiribati residents and 250 Tonga (and earlier Fiji) citizens to settle in New Zealand, plus their associates and dependent kids.<sup>47</sup>

New Zealand does not have any formal humanitarian visas in relation to climate change and displacement on ‘respond to climatic disasters in the Pacific and manage changes as they arise.’ Rather than just ‘correcting misunderstandings about the stance of New Zealand on the problem of environmental migrants’ (no agreement to resettle Tuvalu individuals)’ and ‘outlining New Zealand’s current commitment to climate change adaptation efforts in the Pacific region’,<sup>48</sup> instead they decide to:

- a) acknowledge the concerns of Pacific Island countries in relation to this issue;

---

include both initial registration for the ballot, and re-registration (for people who have applied in the ballot on a previous occasion).

<sup>45</sup> Ibid. As at August 2011 show that only 41 visas have been granted to I- Kiribati in 2011. It is unclear whether further grants will be made later in the year.

<sup>46</sup> People interviewed commented on difficulties in securing a job offer in New Zealand. The job issue has partly been addressed by NZ companies visiting the islands and agreeing to provide a job to anyone selected. There is no requirement that the particular job be taken up once the person arrives in NZ. Some find the NZ\$60 registration fee expensive (it is NZ\$25 for re-registrations). Although I did not encounter this view in my own interviews, one community leader reportedly condemned the scheme as a new type of ‘slavery immigration’, whereby educated Tuvaluans renounce stable, white-collar government employment at home to end up as cleaners or fruit-pickers in New Zealand: quoted in Shawn Shen, ‘Noah’s Ark to Save Drowning Tuvalu’ (2007) 10 *Just Change: Critical Thinking on Global Issues* 18, 19

<sup>47</sup> “Pacific Access Category” (Immigration New Zealand, last updated 29 November 2010), <http://www.immigration.govt.nz/migrant/stream/live/pacificaccess/>. (accessed July 03, 2019).

<sup>48</sup> Background: Environmental Migrants/Relocation/Displacement (n 124) 343.



b) stress that current climate change efforts in the Pacific should continue to focus on adaptation, and should be underpinned by the desire of Pacific peoples to continue to live in their own countries; and

c) reaffirm that New Zealand has a proven history of providing assistance where needed in the Pacific, and that our approach to environmentally displaced persons would be consistent with this.<sup>49</sup>

However, for people displaced by or seeking to migrate away from the impacts of climate change, it remains without a specific visa category.

#### **2.2.4. The United States**

The U.S. created Temporary Protected Status (TPS) provides a secure haven for individuals who are unwilling to return to their home country's possibly hazardous circumstances. Protection is not automatic; a nation must first be 'designated' by the Attorney General before it is eligible for citizens. A nation may be 'designated' where a continuing armed conflict threatens the private safety of individuals or where: an earthquake, flood, drought, epidemic or other environmental catastrophe has occurred in the state leading in a significant, but temporary, disturbance of living circumstances in the affected region.<sup>50</sup>

TPS may be given for periods ranging from six to 18 months and may be extended if country circumstances do not alter. It is a temporary status, however, as its name suggests, and individuals on TPS are not be able to apply to become legal permanent residents (LPRs) in the U.S. without a special Congress act.<sup>51</sup>

---

<sup>49</sup> Background: Environmental Migrants/Relocation/Displacement (n 124) 344.

<sup>50</sup> Immigration and Nationality Act, INA, 244(b), 8 USC, 1254a(b).

<sup>51</sup> Ruth E. Wasem and Karma Ester (n 5) 6. This occurred in 1992 when Chinese people on Deferred Enforced Departure (DED) were permitted to adjust to LPR status under the Chinese Student Protection Act of 1992: PL 102-404, 106 Stat 1969

Due to two earthquakes in 2001, TPS was given to individuals from El Salvador. Other calls for TPS in Peru, Pakistan, Sri Lanka, India, Indonesia, Thailand, Somalia, Myanmar, Malaysia, the Maldives, Tanzania, Seychelles, Bangladesh, and Kenya have been made, and the U.S. government has not taken a formal stance on those nations.<sup>52</sup> There is, therefore, nothing in principle that would stop the granting of TPS to individuals affected by a catastrophe linked to climate change. Though, individuals facing slow-onset climate change effects are unlikely to be helped, considering the moment they take to manifest and their 'creeping' effect, rather than their sudden nature. Moreover, since TPS is only accessible to designated nationals in the U.S. at the moment of the catastrophe, not to those fleeing after a case, it may be of little significance to people in many affected nations, such as Kiribati, Tuvalu, and Bangladesh. For these communities, the U.S. is not a common destination country, and many of the worst affected would lack the first means to travel there. Work permission is not automatic and must be requested individually. Sometimes individuals whose TPS has not been renewed have been given.<sup>53</sup>

## 2.2. Criticism

Climate refugees in unforeseen migration patterns will trigger mass movements of individuals. This mass of refugees is going to have to go somewhere. To decide which nations will take refugees, how many they will take, and how they will be accommodated, there will need to be away. It is 'one of the most complexes and discussed problems' whether states are

---

(9 October 1992) and for Haitians under the FY 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act: PL 105-277, 112 Stat 2681, 105th Congress 2nd Session (21 October 1998). Legislation for some other TPS groups has been introduced but not enacted, and included in comprehensive immigration reform legislation. In the 111th Congress, HR 264 would enable some current TPS holders to convert to LPR status if they have lived in the US for five years or more; are of good moral character; have no criminal convictions; have successfully completed a course on reading, writing, and speaking in English (with exceptions on account of disability); have accepted the values and cultural life of the US; and have completed at least 40 hours of community service: see Wasem and Ester (n 5) 7.

<sup>52</sup> Ibid (n 5) 5.

<sup>53</sup> Jane McAdam, *Climate Change, Forced Migration and International Law* (New York: Oxford University Press, 2012).

legally liable for climate change, which should be examined on the broader context of State responsibility for harm to the environment.

Late critics tended to be migration theorists who discovered that their experiences studying migration conflicted with the description of human movements as driven by modifications in the physical setting or were not completely captured. A comparatively fresh notion of the Responsibility to Protect (R2P) can also be criticized for “the international community should only bear the responsibility if the state is unable or not willing to take its responsibility.”<sup>54</sup>

For non-citizens, many states have some discretionary leave to stay for humanitarian or compassionate reasons. The applicability of these displacements to an individual seeking protection on the grounds of climate change will differ from jurisdiction to jurisdiction. Since each of them has different eligibility criteria for humanitarian protection mechanism and it continues to be seen whether decision-makers are ready to consider their conditions as exceptionally humanitarian.<sup>55</sup>

If countries decide to develop a treaty that responds explicitly to climate change-related movements at some stage in the future, it is essential to acknowledge that this will be a deliberate, political choice to favor climate change as a driver of motion over other drivers.<sup>56</sup>

---

<sup>54</sup> Gareth Evans et al., *The Responsibility to Protect*, *International Commission on Intervention and State Sovereignty* (2001).

<sup>55</sup> For an analysis of State practice in 10 European countries, see ECRE (n 68). Of the 10 States surveyed by ECRE, only Switzerland did not have such a provision: 7.

<sup>56</sup> For example, during the League of Nations period, refugee instruments selected specific national groups of refugees as subjects of international protection, even though it was recognized that there were many other groups of people in need of such protection: see Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd ed., Oxford University Press, 2007) 7.

## CHAPTER III: GLOBAL APPROACHES

### 3.1. Relevant International Legal Instruments

There are some relevant international laws existed in which can apply to climate change refugee in the perspective of human rights based. As it seems, the notion of an ‘ecological refugee’ first appeared in 1948.<sup>57</sup>

There is also a policy on the conditions under which a refugee is no longer a refugee. This is described below in a Cessation Clause of **the 1951 Refugee Convention** (Article 1C), which is described as saying that the Convention will cease to apply to anyone falling within the definition of refugee if:

- “He has voluntarily re-availed himself of national protection
- He has voluntarily re-acquired his nationality
- He has acquired a new nationality
- He has voluntarily re-appeared himself in the country where he left
- He can no longer continue to refuse to avail himself of the protection of the country of his nationality
- Be a person who has no nationality he can return to the country of his former habitual residence.”<sup>58</sup>

This notion is referred to as *non-refoulement*. The 1951 Refugee Convention expressed in which “no Contracting State shall expel or return *refouler* a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his

---

<sup>57</sup> William Vogt, *How They Became the Human Face of Climate Change: Research and Policy Interactions in the Birth of the “Environmental Migration” Concept* (Cambridge University Press and UNESCO Publishing, 2011) 227.

<sup>58</sup> The Refugee Convention 1951, Art 1(c).

race, religion, nationality, membership of a particular social group or political opinion” in Article 33.

*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.*<sup>59</sup>

An argument that could represent individuals affected by its effects a ‘particular social group’ would be hard to create because the law requires that the group be linked by a primary, unchangeable feature other than the danger of persecution itself.<sup>60</sup>

Citizens who escape their nation for purposes other than those set out in the Convention of 1951 and the Protocol of 1967 can still receive refugee status.

This implies that a broad range of processes have been adopted by the States because of the unlikelihood that all States could create the same processes. Some States use official processes developed explicitly for this purpose, and others use very informal arrangements to determine refugee status.

Apart from the Refugee Convention, **the New York Declaration for Refugees and Migrants**, the Outcome Document from the 19<sup>th</sup> September 2016 High-Level Meeting to Address Large Movement of Refugees and Migrants, that the first substantive section explicitly recognizes climate change:

---

<sup>59</sup> The Refugee Convention 1951, Art 1a(2), read in conjunction with Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267 (together ‘Refugee Convention’).

<sup>60</sup> Goodwin-Gill and McAdam (n 20) 79–80; Applicant A v. Minister for Immigration and Ethnic Affairs (1997) 190 CLR 225, 341 (Dawson J).

*Some People move....in response to the adverse effects of climate change, natural disasters (some of which may be linked to climate change) or other environmental factors. Many moves, indeed, for a combination of these reasons.*

As most climatic displacements occur within national borders, the New York Declaration may not tackle climate displacement properly. In these conditions, other procedures such as the World Humanitarian Summit can provide additional advice on the rights of internally displaced persons.<sup>61</sup>

Whether as a voluntary adaptation approach or as a forced motion in reaction to environmental disaster or mitigation or adaptation measures, the reality that human rights law is somehow applicable to displacement for three primary reasons:

- It establishes minimum treatment standards for people within their jurisdiction.;
- It might provide a legal foundation on which protection can be sought for the displaced in another country, as well as a ban on the return of severe damage.
- Where displacement takes place, the human rights legislation sets out minimum treatment requirements for displaced persons.<sup>62</sup>

One of the main components of future intervention is human rights. It states that future climate change action has to do with displacement;

*Require a shared understanding of and coordinated approaches to cross-border disaster-displacement that bring together and link humanitarian action, human rights protection,*

---

<sup>61</sup> New York Declaration 2016.

<sup>62</sup> Jane McAdam, *Climate Change, Forced Migration and International Law* (New York: Oxford University Press, 2012).

*migration management, refugee protection, disaster risk reduction, climate change adaptation, and development interventions.*<sup>63</sup>

The right to life is protected in Article 3 of the Universal Declaration of Human Rights (UDHR),<sup>21</sup> Article 6 of the International Covenant on Civil and Political Rights (ICCPR), Article 6 of the Convention on the Rights of the Child (CRC),<sup>22</sup> and in all regional human rights treaties.<sup>64</sup>

**The United Nations High Commissioner for Refugees (UNHCR)** has mentioned in the current context: the acquisition of a valid nationality should be foreseen before the dissolution of the State concerned in order to avoid temporary statelessness. Therefore, dual nationality may need to be allowed for a temporary period at least. A waiver of official criteria for renunciation or acquisition of nationality may also be needed, which may be difficult for affected communities to meet. Such arrangements should include, *among other things* for residence rights, military duties, health care, pensions, and other social security benefits. It may also be necessary to consider citizens of affected States who may have been displaced previously, potentially to third countries not a party to the contract.<sup>65</sup>

Foster wrote widely on the grounds for international protection on socio-economic deprivation.<sup>66</sup> Firstly, some **International Covenant on Economic, Social, and Cultural**

---

<sup>63</sup> “Discussion Paper, Human Rights, Migration, and Displacement Related to the Adverse Impacts of Climate Change,” *Office of the United Nations High Commissioner for Human Rights*. Drafted by Mary Robinson Foundation - Climate Justice in Consultation with the Core Drafting Group, September 30, 2016, <https://www.ohchr.org/Documents/Issues/ClimateChange/EM2016/HumanRightsMigrationDisplacement.pdf>. (accessed July 03, 2019).

<sup>64</sup> European Convention on Human Rights (formally the Convention for the Protection of Human Rights and Fundamental Freedoms), art. 6.

<sup>65</sup> UNHCR (n 153) 3. See also Park (n 3) 19; Executive Committee Conclusion No 95 (LIV) ‘Internal Protection’ (2003) para (v), which encourages ‘States to cooperate with UNHCR on methods to resolve cases of statelessness and to consider the possibility of providing resettlement places where a stateless person’s situation cannot be resolved in the present host country or other country of former habitual residence, and remains precarious’.

<sup>66</sup> See, e.g. Foster (n 135); Foster (n 16).

**Rights (ICESCR)** is immediately binding.<sup>67</sup> Secondly, even where they are not, Article 2 of that treaty imposes ‘two key duties of an immediate nature’: (a) the obligation to ‘take steps’ to realize rights, which includes a ‘core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant’; and (b) the duty to permit rights to be exercised without discrimination on specified grounds. This implies that a State Party in which a large number of people are deprived of vital foodstuffs, vital primary health care, of basic shelter and housing, or the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant.’<sup>68</sup> Accordingly, she expresses that: where the individual fears a breach based on non-respect of rights by the recipient state. (by withdrawing or preventing access to rights or actively denying them to a specific section of the population) Or the inability to safeguard freedoms (because non-state actors are unable or reluctant to safeguard against violations) is probably no more complicated than where civil and political rights are a problem.<sup>69</sup>

**International Covenant on Civil and Political Rights (ICCPR)** Article 7 prohibits torture and therapy or penalty that is cruel, inhuman, or degrading. The UN Human Rights Committee's conventional strategy is to view these types of ill-treatment as falling on a sliding scale, or hierarchy, with the most severe expression of torture. Therefore, one degree is the difference between torture and inhumane treatment. Article 7 includes a *non-refoulement* obligation,

---

<sup>67</sup> International Covenant on Economic, Social and Cultural Rights, art 3 (equality between men and women); art 7(a)(i) (equal pay); art 8 (right to form trade unions and to strike); art 10(3) (protection of children from exploitation); art 13(2)(a) (free primary education); art 13(3) (freedom of parents to choose the type of education for their children).

<sup>68</sup> Committee on Economic, Social and Cultural Rights, ‘General Comment No 3’ (n 208) para 10. See respectively Committee on Economic, Social and Cultural Rights, ‘General Comment 12: The Right to Adequate Food (Art 11)’ UN Doc E/C.12/1999/5 (12 May 1999); ‘General Comment No 13: The Right to Education (Art 13)’ UN Doc E/C.12/1999/10 (8 December 1999); ‘General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12)’ UN Doc E/C.12/2000/4 (11 August 2000); ‘General Comment No 15 (2002): The Right to Water (Arts 11 and 12)’ UN Doc E/C.12/2002/11 (20 January 2003)

<sup>69</sup> Foster (n 16) 281.



though the facts were justified only once in breach of this clause from the suggested removal.<sup>70</sup> In contrast, Article 3 of the ECHR—which protects against torture and inhuman or degrading treatment or punishment is a provision commonly used which has mostly developed the human rights-based *non-refoulement* jurisprudence in the European Court of Human Rights. That is why choices are taken by that jurisdiction form the bulk of the debate.

**The European Commission of Human Rights (ECHR)** ‘is essentially directed at the protection of civil and political rights,’ this does not imply that socio-economic rights stay completely unprotected. As stated by the court in *Airey v Ireland*, although the Convention lays down what are fundamentally civil and political rights, many of them have social or economic consequences. Therefore, like the Commission, the Court believes that the mere fact that an understanding of the Convention can extend to the field of social and economic rights should not be a crucial factor against such an interpretation; there is no water-tight division that separates the area from the area covered by the Convention.<sup>71</sup>

The imminence requirement was also a feature of instances on Article 3 of the ECHR. The relevant question is ‘whether the applicant’s illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity’. In addition to that Article 3 of the ECHR stated that a ‘real risk’ of inhuman or degrading treatment or punishment does not require the applicant to identify ‘other special distinguishing features relating to him personally in order to demonstrate that he

---

<sup>70</sup> *Ng v. Canada* Communication No 469/1991 (5 November 1993) UN Doc CCPR/C/49/D/469/1991 (7 January 1994) in Sarah Joseph, Jenny Schultz, and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (2nd edn, Oxford University Press, 2004) para 9.80. This is in contrast to the multiple findings by the Committee against Torture with respect to Art 3 of CAT.

<sup>71</sup> *Airey v Ireland* (n 90) para 26.

was and remains personally at risk ', since to require this 'might render the protection offered by that provision illusory'<sup>72</sup>

Similarly, According to the European Court of Human Rights has confirmed that Article 2 of the ECHR may be relied upon to prevent removal,<sup>73</sup>

The EU focuses on a significant degree of collaboration in all areas of global relations, including ' assisting people, nations, and areas facing natural or man-made disasters. This can raise a question whether does man-made here can be referred as climate change or not, since scientifically climate change is a consequence of human actions. Furthermore, it does not expressly refer to the acceptance of those displaced by such events, and this is not usually understood as part of the obligation to cooperate.<sup>74</sup>

**The United Nations Conference on the Human Environment 1972, Stockholm Declaration** as showed in *Budayeva v Russia*, the European Court of Human Rights ruled that, where the danger is recognized, the State's obligation to safeguard life extends to protection against natural disasters. Competent authorities are required:

- enforce and enforce legislation that addresses all appropriate elements of disaster risk mitigation and establishes the required processes and processes;
- take the required administrative steps, including monitor situations which are possibly hazardous;
- inform the public of potential hazards and hazards;

---

<sup>72</sup> N v. Secretary of State for the Home Department (n 108) para 69 (Baroness Hale) (emphasis added).

<sup>73</sup> For example, in *Z and T v. United Kingdom* App no 27034/05 (ECtHR, 28 February 2006) 6: the Art 3 analysis from *Soering v. United Kingdom* (1989) 11 EHRR 439 'applies equally to the risk of violations of [Art] 2'. See also *Ullah* (n 12) para 40 (Lord Steyn): 'If article 3 may be engaged it is difficult to follow why, as a matter of logic, article 2 could be preemptorily excluded. There may well be cases where article 3 is not applicable but article 2 may be'

<sup>74</sup> Jane McAdam, *Climate Change, Forced Migration and International Law* (New York: Oxford University Press, 2012), 256-285.

- evacuate populations that may be affected;
- carry out criminal inquiries and prosecute those accountable for neglecting their responsibilities in the event of disaster-related fatalities; and
- compensate surviving relatives of victims who have been murdered as a result of neglect of these responsibilities.<sup>75</sup>

**The United Nations Convention to Combat Desertification (UNCCD)** advocates for ‘new enabling environments to promote successful solutions to combat desertification’ and that ‘the status of environmental or ecological migrants must be upgraded and they must be extended the same rights of protection as refugees who may have been forced to flee lands for reasons other than the environment’ (UNCCD, n.d 2). The UNCCD’s ten-year strategy between 2008 and 2018 includes a pillar specifically related to desertification and migration, including the ‘social, environmental, political and cultural interactions of populations affected by land degradation’ (ibid.); the promotion of partnerships and investment from developed countries; risk management; traditional sustainable technologies; and the links between desertification and human rights. The UNCCD is the sole legally binding international agreement linking environment and development to sustainable land management, and as such represents an opportunity to address mobility, climate change adaptation, land rights and security and sustainable development.<sup>76</sup>

**The African Commission on Human and Peoples’ Rights** has discovered an infringement of health and life rights as a consequence of repeated evictions and displacements from lands in Mauritania that the state has confiscated.

---

<sup>75</sup> Budayeva v. Russia App nos 15339/02, 21166/02, 20058/02, 11673/02, and 15343/02 (ECtHR, 20 March 2008).

<sup>76</sup> Sarah Stapleton, Rebecca Nadin, Charlene Watson and Jan Kellet, Report: Climate Change, Migration and Displacement (The Need for a Risk-informed and Coherent Approach (Oversea Development Institute and The United Nations Development Programme, 2017), 26.

*an environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and development as the breakdown of the fundamental ecological equilibria is harmful to physical and moral health.<sup>61</sup> That this provision is expressed as a right attaching to ‘peoples’, rather than as an individual human right, means that the right is focused on safeguarding specific groups sharing a common cultural heritage (such as indigenous peoples), supporting international human rights principles that seek to safeguard the cultural and linguistic integrity of such groups.<sup>77</sup>*

**The 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights** mentions in Article 11 that: ‘Everyone shall have the right to live in a healthy environment and to have access to basic public services. The States Parties shall promote the protection, preservation, and improvement of the environment.’ In the American context, however, the right is not subject to individual petitions to the Inter-American Commission on Human Rights, hampering individuals’ capacity to seek remedies for a breach.<sup>78</sup>

**The Sendai Framework for Disaster Risk Reduction** suggests on the role of risk decrease and its human rights connection, at Article 19(c) ‘Managing the risk of disasters is aimed at protecting persons and their poverty, health, livelihood, and productive assets, as well as cultural and environmental assets, while promoting and protecting human rights, including the right to development.’<sup>79</sup>

---

<sup>77</sup> Malawi African Association v. Mauritania (2000) AHRLR 149 (African Commission on Human and Peoples’ Rights) pursuant to the African Charter on Human Rights, Arts 16 and 4 (respectively). See also Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya, African Commission on Human and Peoples’ Rights (4 February 2010) 276/2003, par 216.

<sup>78</sup> Protocol of San Salvador, Art 19(6).

<sup>79</sup> Sendai Framework, Article 19(c).

### 3.2. Development of International Legal Frameworks on Climate Movement

The UN High Commissioner for Refugees has expressed, “Although there is a growing awareness of the perils of climate change, its likely impact on human displacement and mobility has received too little attention.” Climate change can make some individuals stateless by triggering population movements both within and across boundaries. Climate change, therefore, adds to the growing need for policies that address environmental refugees specifically.<sup>80</sup>

The United Nations Convention on the Status of Refugees of 1951 sets out individual and state rights and duties, but does not explicitly state that climate refugees may also be regarded as refugees. Though, some suggest<sup>81</sup> that climate refugee is a component of a specific social group that is explicitly included in the refugee definition. The Geneva Convention is not sufficiently progressive to adapt to changing environmental circumstances and an expansion of the Convention is therefore suggested.<sup>82</sup>

It is not wise to keep climate refugee protection on the declaration alone, as the climate could affect the capacity of already weak states that can not safeguard their citizens.<sup>83</sup>

The Nansen Initiative’s Agenda for the Protection of Cross-Border Displaced Persons in the context of Disasters and Climate Change outlines the legal shortcomings as follows:

*‘persons who have moved across international borders in disaster contexts are protected by human rights law, and where applicable, refugee law. However, international law does not address critical issues such as admission, access to basic services during temporary or permanent stay, and conditions or return. While a small number of states have national laws or bilateral or (sub-)regional agreements*

---

<sup>80</sup> “Global Trend: Refugees, Asylum Seekers, Returnees, Internally Displaced and Stateless Persons,” *The United Nations High Commissioner for Refugee*. 2009, <https://www.unhcr.org/4c11f0be9.pdf>. (accessed July 03, 2019).

<sup>81</sup> Elin Jakobsson, *Global Policy Making on Climate Refugees: What is the Problem?* (2010), 19.

<sup>82</sup> “Migration, Environment and Climate Change: Assessing the Evidence” *International Organization for Migration*. 2009, [http://publications.iom.int/bookstore/free/migration\\_and\\_environment.pdf](http://publications.iom.int/bookstore/free/migration_and_environment.pdf). (accessed July 03, 2019).

<sup>83</sup> *Ibid.*, 409.

*that specifically address the admission or temporary stay of foreigners displaced by disasters, the vast majority of countries lack any normative framework.*<sup>84</sup>

In this context, consideration should be given to the minimum level of therapy due to those affected by climate change both before and after motion:<sup>85</sup>

- loss of cultural and physical heritage<sup>86</sup>
- the loss of the ability to work<sup>87</sup> and make a decent living for themselves and their families<sup>88</sup>
- loss of access to food, water, clothing, and housing limiting their rights to an adequate standard of living<sup>89</sup>
- diminished right to self-determination<sup>90</sup>
- loss of access to land<sup>91</sup>
- freedom of movement and choice of residence<sup>92</sup>
- erosion of the protections on their rights to life, liberty, and freedom from torture<sup>93</sup>

---

<sup>84</sup> The Nansen initiative; Agenda for the protection of cross-border displaced persons in the context of disasters and climate change; vol 1; 2015.

<sup>85</sup> “Discussion Paper, Human Rights, Migration, and Displacement Related to the Adverse Impacts of Climate Change,” *Office of the United Nations High Commissioner for Human Rights*. Drafted by Mary Robinson Foundation - Climate Justice in Consultation with the Core Drafting Group, September 30, 2016, <https://www.ohchr.org/Documents/Issues/ClimateChange/EM2016/HumanRightsMigrationDisplacement.pdf>. (accessed July 03, 2019).

<sup>86</sup> ICESCR, art 15(2).

<sup>87</sup> ICESCR, art 6.

<sup>88</sup> ICESCR, art 7(a)(ii).

<sup>89</sup> ICESCR, art 11.

<sup>90</sup> ICCPR, art 1.

<sup>91</sup> This is an explicit right for indigenous peoples and women. Part II, Convention 169 on Indigenous and Tribal People, 1989; art 14(g) of The Convention on the Elimination of all Forms of Discrimination Against Women.

<sup>92</sup> ICCPR, art 12(1).

<sup>93</sup> ICCPR, art 6, 7 and 9.

Over the creation of the Nansen Initiative's Cross-Border Disaster and Climate Change Protection Agenda, supported by an extensive intergovernmental consultation in October 2015, and pursued by the State-led Disaster Displacement Platform.

The Nansen Principles have been created to guide reactions to displacement problems in the context of climate change and acknowledge this. Principle 1 states that ‘Responses to climate and environmentally related displacement need to be informed by adequate knowledge and guided by the fundamental principles of humanity, human dignity, human rights, and international cooperation.’<sup>94</sup> Initiatives include the Geneva Pledge for Human Rights in Climate Action seek to rectify this absence of cooperation between human rights and policymakers on climate change at the domestic level.

The Human Rights Council acknowledged the significance of international collaboration in the search for a global solution to this global issue in 2009 and 2011. It can only be anticipated in the word internally displaced persons (IDPs) to tackle this problem in a resolution in the Human Rights Council.<sup>95</sup>

UNHCR believes that a global or regional tool with a soft law personality should be developed that is more suitable to the problem.<sup>96</sup> Typically, the following alternatives are discussed at a worldwide level on how to accommodate climate refugees. First, the extension of the Geneva Convention of 1951, second, the extension of the Guiding Principles on Internal Displacement, third, the addition of a climate-induced migration protocol to the UNFCCC,

---

<sup>94</sup> “Climate Change and Displacement in the 21st Century.” *The United Nations High Commissioner for Refugee. The Nansen Conference*, June 5-7, 2011, <https://www.unhcr.org/4ea969729.pdf>. (accessed July 03, 2019).

<sup>95</sup> HCR Res. 14/6 (17 June 2010), <http://daccess-ddsny.un.org/doc/UNDOC/GEN/G10/145/69/PDF/G1014569.pdf?OpenElement>. (accessed July 03, 2019).

<sup>96</sup> 48 UNHCR. ‘Legal and Protection Policy, Research Series, Protecting People Crossing Borders in the Context of Climate Change Normative Gaps and Possible Approaches,’(2012) p. 71  
<http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=4f33f1729&query=Climate%20change,%20natural%20disasters%20and%20human%20displacement:>. (accessed July 03, 2019).

fourth, the establishment of a fresh, tailor-made global convention and, fifthly, the use of temporary protection mechanisms to accommodate environmentally-induced displacement.<sup>97</sup>

The Sendai Framework for Disaster Risk Reduction 2015–2030 (SFDRR) acknowledged as a prospective vulnerability driver for displacement, while its successor, the Sendai Framework (SFDRR), focuses on displacement in reaction to extreme occurrences. SFDRR shows the contribution of migrants to their destination's resilience but provides little consideration to individuals moving because of or in anticipation of slow or slow environmental change.<sup>98</sup>

As acknowledged under the UNFCCC scheme, including paragraph 14(f) of the Cancun Adaptation Framework and the decision of COP21 to establish a Task Force on Displacement under the Warsaw Loss and Damage Mechanism to prepare suggestions for action “to avert, minimize and address displacement related to the adverse effects of climate change.”

- The Global Forum on Migration and Development.
- The High-Level Summit for Refugees and Migration (September 2016).<sup>99</sup>

Protection alternatives mentioned above can help to respond to a catastrophe or emergency in instances of sudden motion, as they are very uncomfortable for the slow effects of climate change. Including those who have called for a significant expansion of the structure of the

---

<sup>97</sup> European Parliament, ‘Climate Refugees: Legal and policy responses to environmentally induced migration’ (2011), 36.

<sup>98</sup> Emily Wilkinson, Amy Kirbyshire, Leigh Mayhew, Pandora Batra, and Andrea Milan, Climate-induced migration and displacement: closing the policy gap. London: ODI, 2016, <https://www.odi.org/publications/10594-climate-induced-migration-and-displacement-closing-policy-gap>. (accessed July 03, 2019).

<sup>99</sup> “Discussion Paper, Human Rights, Migration, and Displacement Related to the Adverse Impacts of Climate Change,” *Office of the United Nations High Commissioner for Human Rights*. Drafted by Mary Robinson Foundation - Climate Justice in Consultation with the Core Drafting Group, September 30, 2016, <https://www.ohchr.org/Documents/Issues/ClimateChange/EM2016/HumanRightsMigrationDisplacement.pdf>. (accessed July 03, 2019).



Refugee Convention appear to believe that protection should be related to 'flight' rather than departure 'before conditions degenerate into life-threatening proportions'.<sup>100</sup>

This instantly introduces difficulties because, until recently, most States' legislation and global law itself contained no laws banning absolute concentrations of carbon emissions. The situation for liability only becomes stronger after emission reduction objectives have been adopted since the 1990s, emissions exceeding which could well involve legal liability.<sup>101</sup> There are significant difficulties in quantifying the damage induced by any specific State's carbon emissions and identifying the causes of emissions and harmful effects when all States have contributed to emissions at some stage. There are still difficulties in creating corporate accountability for carbon emissions in a legal system where States remain primary duty holders. People residing in regions that are likely to become uninhabitable due to the effects of climate change should have the first choice of moving to other nations in proportion to the total greenhouse gas emissions of the host nations.<sup>102</sup> This would imply that the US (as the largest emitter) would bring in 866,000 individuals per year, according to their calculations, while Italy

---

<sup>100</sup> Gaim Kibreab, *Climate Change and Human Migration: A Tenuous Relationship?* (Oxford University Press, 2009), 20. Fordham Environmental Law Review 357, 398 referring to Aristide R Zolberg and others, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (Oxford University Press, 1989) 31, who advocate that the term 'refugee' should encompass any flight from life-threatening violence.

<sup>101</sup> Tol and Verheyen suggest that, at the very least, States were aware of the impacts of unchecked greenhouse gas emissions by 1992, when the UNFCCC was adopted: see Richard SJ Tol and Roda Verheyen, 'State Responsibility and Compensation for Climate Change Damages: A Legal and Economic Assessment' (2004) 32 *Energy Policy* 1109, 1118. Other relevant literature they refer to includes: Claudia Kemfert and Richard SJ Tol, 'Equity, International Trade and Climate Policy' (2002) 2 *International Environmental Agreements* 23; Richard SJ Tol, 'Welfare Specification and Optimal Control of Climate Change: An Application of FUND' (2002) 24 *Energy Economics* 367; Theodore Panayotou, Jeffrey D Sachs, and Alix P Zwane, 'Compensation for "Meaningful Participation" in Climate Change Control: A Modest Proposal and Empirical Analysis' (2002) 43 *Journal of Environmental Economics and Management* 437; James Cameron and Durwood Zaelke, 'Global Warming and Climate Change: An Overview of the International Legal Process' (1990) 5 *American University Journal of International Law & Policy* 249; Roda Verheyen, 'The Legal Framework of Adaptation and Adaptive Capacity' in Richard JT Klein, Saleemal Huq, and Joel B Smith (eds), *Climate Change, Adaptive Capacity and Development* (Imperial College Press, 2003). See further Roda Verheyen, *Climate Change Damage and International Law: Prevention Duties and State Responsibility* (Martinus Nijhoff, 2005); Rebecca M. Bratspies and Russell A Miller (eds), *Transboundary Harm in International Law: Lessons from the Trail Smelter Arbitration* (Cambridge University Press, 2006) Ch 8–9; Christina Voigt, 'State Responsibility for Climate Change Damages' (2008) 77 *Nordic Journal of International Law* 1.

<sup>102</sup> Sujatha Byravan and Sudir Chella Rajan, *Providing New Homes for Climate Change Exiles* (Climate Policy, 2006), 247-249.

(as the 10th largest emitter) would take 8,600. These figures are similar to the real number of immigrants that these States already absorb each year.

Several nations provide some security for individuals fleeing natural disasters, even in the lack of specific legislation.<sup>103</sup> States may prefer ad hoc humanitarian reactions for multiple purposes, enabling them to determine on a situation-by-situ basis whether they want to provide 'security,' for what duration and in what form.

While the picture of an island disappearing under the increasing ocean offers a powerful and scary foundation for lobbying for worldwide carbon emission cuts, it is not necessarily as helpful to get the international community to create regulatory frameworks to react to the climate change mobility. It can lead to misunderstandings about the probable patterns, timescale, and nature of such a movement. This does not mean that this strategy is disingenuous. But instead that it is essential to be alert to the specific goals it can encourage: raise awareness of climate effects on small island states, put pressure on political results in climate negotiations, and to make the international community conscious that failure to address worldwide emissions could eventually lead to severe destruction of human culture and structures. Such advocacy often includes simplifying the problems,<sup>104</sup> that is partly why the governments of the Pacific cannot agree on a common strategy to the problem of displacement.

From advocacy, one can understand that lobbying for a 'climate refugee' agreement can effectively raise awareness and put climate change movement on the global agenda. It should consider how (and to what extent) global legislation and institutions will react to climate-related

---

<sup>103</sup> Sometimes this has been as a result of calls from UNHCR: see UNHCR, 'High Commissioner's Dialogue on Protection Challenges: Breakout Session 1: Gaps in the International Protection Framework and its implementation: Report by the Co-Chairs' (December 8-9, 2010), 4.

<sup>104</sup> Jane McAdam, *Climate Change, Forced Migration and International Law* (New York: Oxford University Press, 2012), 34-57.

human movement in portion rely on (a) whether such movement is viewed as voluntary or involuntary; (b) the nature of the trigger (a rapid onset disaster versus a slow- onset process); (c) whether international borders are crossed; (d) the extent to which there are political incentives to characterize movement as linked to climate change or not; and (e) whether movement is driven or aggravated by human factors, such as discrimination.<sup>105</sup>

If empirical evidence does not support allegations, it will not reach its ends and may eventually be ended in disaster.<sup>106</sup> It is helpful to consider its rationale when reflecting on global policy reactions and which organizations should be accountable for tackling climate change.<sup>41</sup> It leads to questions as to whether it is suitable to distinguish between displaced persons who deserve 'protection' due to climate change and victims of 'merely' financial or environmental distress.

### **3.3. Discussions within the UN and EU on Climate Change and Human Mobility**

Initially, climate refugees were articulated as a 'problem' that required urgent policy attention and which posed a threat to the national security of states.

Potential measures to achieve policy coherence around human rights for those displaced by climate change include ensuring OHCHR has a role in engaging on the Taskforce on Displacement under the UNFCCC as well as developing the UNFCCC's role, and hence the climate dimension, of several processes currently underway. These could include;

- The outcome processes from the High Level Summit on Migrants and Refugees

---

<sup>105</sup> Jane McAdam, *Climate Change, Forced Migration and International Law* (New York: Oxford University Press, 2012), 17.

<sup>106</sup> For example, there is some discussion that the 'sinking' of the Carteret Islands is not being caused by sea-level rise attributable to climate change, but rather to subsidence: John Campbell, 'Climate-Induced Community Relocation in the Pacific: The Meaning and Importance of Land' in McAdam (n 3) 68.

- The global compact on safe migration
- The development of principles on migrants in vulnerable situations (these could build on a set of principles/practical guidance that are currently being developed by the GMG WG on human rights and gender led by OHCHR)
- The Global Forum on Migration and Development
- Inputs to the Secretary General’s Report on the human rights of migrants

Further, displacement as a result of climate change could also be addressed by the annual human Rights Council Climate Change Resolution.<sup>107</sup>

The UNICEF defines a refugee as “someone who has been forced to leave their country because they are unable to live in their home, or they fear they will be harmed. This can be due to some reasons, including fighting or natural disasters, like earthquakes and floods”.<sup>108</sup>

We can see that only the UNICEF has gone as far as stating that refugees include those persons displaced by natural disasters, other international documents have included in the definition the term “events seriously disturbing public order.” Avoiding the term ‘refugee’, the Office of the United Nations High Commissioner for Refugees has moved towards a definition of ‘environmentally displaced persons’ as those: “who are displaced from or who feel obliged to leave their usual place of residence, because their lives, livelihoods, and welfare have been

---

<sup>107</sup> “Discussion Paper, Human Rights, Migration, and Displacement Related to the Adverse Impacts of Climate Change,” *Office of the United Nations High Commissioner for Human Rights*. Drafted by Mary Robinson Foundation - Climate Justice in Consultation with the Core Drafting Group, September 30, 2016, <https://www.ohchr.org/Documents/Issues/ClimateChange/EM2016/HumanRightsMigrationDisplacement.pdf>. (accessed July 03, 2019).

<sup>108</sup> L. W. Marshall, *Toward a new definition of ‘refugee’: is the 1951 convention out of date?* (2011), 61-66.

placed at serious risk as a result of adverse environmental, ecological or climatic processes and events”.<sup>109</sup>

In December 2010 an Agreement on Long-term Cooperative Action under the UN Framework Convention on Climate Change (UNFCCC) was created at the conference in Cancún where the understanding and the effort to address climate change’s damage and loss including the climate-induced migration was expressed. The importance of the agreement consists in the first explicit reference to the problem of climate change-related population movements by the international society foreseeing the inclusion of climate-related displacement into national plans and the acceptance of the argument that this issue should be solved on the cooperation basis in order to reach a global and international solution.<sup>110</sup>

The UN General Assembly provided a comprehensive report on Climate Change and its Possible Security Implications to the UN Secretary-General who identified himself with the report and submitted it in 2009.<sup>111</sup> This report paid more attention to population displacement and involuntary migration in relation to environmental change than the previous report<sup>112</sup> about UN activities.

The UN Security Council considered the implications of the climate change on international peace and security regarding forced or voluntary population movements first during a debate in

---

<sup>109</sup> “Environmentally displaced people, Understanding the linkages between environmental change, livelihoods and forced migration”, *University of Oxford*. November, 2008, <http://www.rsc.ox.ac.uk/publications/policy-briefings/RSCPB1-Environment.pdf>. (accessed July 03, 2019).

<sup>110</sup> “Legal and Protection Policy, Research Series, Protecting People Crossing Borders in the Context of Climate Change Normative Gaps and Possible Approaches,” *The United Nations High Commissioner for Refugee*. 2012, <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=4f33f1729&query=Climate%20change,%20natural%20disasters%20and%20human%20displacement:>. (accessed July 03, 2019).

<sup>111</sup> “Report of the Secretary-General, Climate change and its possible security implications,” *The United Nations*. UN Doc. A/64/350, 2009, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/64/350](http://www.un.org/ga/search/view_doc.asp?symbol=A/64/350). (accessed July 03, 2019).

<sup>112</sup> Ibid.

April 2007.<sup>113</sup> Later, in 2011, the Council announced again its worries about the impacts of the climate change to international peace and security<sup>114</sup> but has not passed any resolution yet.

The EU approach has been developing from an overall framework focused on Africa and Mediterranean,<sup>115</sup> through impacts on international security,<sup>54</sup> and also impact on the migration to the EU.<sup>116</sup> Moreover, the European Council submitted a Stockholm Programme in 2010, which dealt with potential effects of climate change on international migration and on the Union, and invited the Commission to present an analysis on climate change and migration.<sup>117</sup>

EU approach to the climate migration is part of the EU development and cooperation policy of the Directorate-General (DG) for humanitarian aid and DG for Home Affairs combined with a disaster risk reduction in the DG for Climate Action. Moreover, in the past, there have been attempts to deal with the environmentally displaced individuals in Common European Asylum Policy at the political level.<sup>118</sup>

There is no standard EU instrument and provision concerning the climate refugee or environmentally displaced individuals; there is still a possibility of application of the Temporary Protection Directive (2001/55/EC). Another problematic fact is that only four EU

---

<sup>113</sup> “5663rd Meeting,” *The United Nations Security Council*. 2007, <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C8CD3-CF6E4FF96FF9%7D/Ener%20SPV%205663.pdf>. (accessed July 03, 2019).

<sup>114</sup> “Statement by the President of the Security Council,” *The United Nations Security Council*. UN Doc. S/PRST/2011/15, 2011, <http://www.un.org/News/Press/docs/2011/sc10332.doc.htm>. (accessed July 03, 2019).

<sup>115</sup> See Council of the European Union, ‘Presidency Conclusions of the Brussels European Council’ (2005), Doc 15914/1/05, REV 1. [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/87642.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/87642.pdf)>accessed 23 November 2012

<sup>116</sup> See European Commission, ‘European Refugee Fund 2008-2013, Community Actions’ (2008) <[http://ec.europa.eu/home-affairs/funding/refugee/work\\_programme\\_2009\\_en.pdf](http://ec.europa.eu/home-affairs/funding/refugee/work_programme_2009_en.pdf)>. (accessed July 03, 2019).

<sup>117</sup> Petra Durkova, Anna Gromilova, Barbara Kiss and Megi Plaku, *Climate Refugees in the 21st Century* (Regional Academy on the United Nations, 2012).

<sup>118</sup> “Report on the Proposal for a Council Directive on Minimum Standards for the Qualification and Status of Third country Nationals and Stateless Persons as Refugees or as Persons Who otherwise Need International Protection (COM (2001) 510. C5-0573/2001. 2001/0207(CNS)),” *The European Parliament*, 2002, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A5-20020333+0+DOC+PDF+V0//EN>. (accessed July 03, 2019).

member states (i.e., CY, FI, IT and SE) recognize some protection for asylum-related applicants in the case of environmental disasters, which shows that at the EU level there still exist no harmonized protection statuses, no in-depth coordination, and exchange of information.<sup>119</sup>

There was a drafting history reveals in the EU that Finland sought to have included in the definition recognition of ‘persons who have had to flee as a result of natural disasters’, but this was not supported by the other Member States, with Belgium and Spain noting that ‘such situations were not mentioned in any international legal instrument on refugees’.<sup>120</sup> Curiously, in 2004, when the Temporary Protection Directive was concluded, the United Kingdom (UK) stated that the instrument would ‘ensure that each European Member State plays its part in providing humanitarian assistance to people forced from their homes by war and natural disasters’.<sup>121</sup> Despite considerable speculation about the possible reach of the Temporary Protection Directive in the context of climate-related movement, there does not appear to be any discussion about formally expanding the instrument.<sup>122</sup>

Human mobility in the form of migration and displacement is a theme of global relevance. The UN Secretary-General’s reform agenda brings together sustainable development, peace and security and human rights. It also bridges the linked ambitions of Agenda 2030 and the Global Compacts on Migration and Refugees, together with action on climate change – a timely agenda that has never been more pertinent. Supporting countries to develop meaningfully, risk-informed policies and allocating appropriate resources is essential to tackling the issues human mobility raises and realizing the opportunities associated with migration in the context of

---

<sup>119</sup> European Parliament, *Climate Refugees: Legal and Policy Responses to Environmentally Induced Migration* (2011), 73.

<sup>120</sup> Council of the European Union, ‘Outcome of Proceedings of Working Party on Asylum’, Doc 6128/01 LIMITE ASILE 15 (16 February 2011), 4.

<sup>121</sup> UK Home Office (n 16) 1.

<sup>122</sup> Walter Kälin and Nina Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches* (Study for the Swiss Ministry of Foreign Affairs, April 2011), 39.

climate change, while also minimizing the expense of mobility and the vulnerabilities of migrants. This is critical if governments are serious about their commitments to the Sustainable Development Goals, the Paris Agreement and the Sendai Framework for Disaster Risk Reduction.<sup>123</sup>

---

<sup>123</sup> Sarah Stapleton, Rebecca Nadin, Charlene Watson and Jan Kellet, *Report: Climate Change, Migration and Displacement (The Need for a Risk-informed and Coherent Approach)* (Oversea Development Institute and The United Nations Development Programme, 2017), 29.



## CHAPTER IV: CASE STUDIES

### 4.1. Bangladesh

Bangladesh is one of climate change's most susceptible nations. Climate change is expected to increase temperatures in Bangladesh over the next decade; monsoon rain and riverbank erosion; intense cyclones; and severe droughts.<sup>124</sup> This will, in turn, affect the development of food,<sup>125</sup> water supplies, health, and the capacity of people to stay and earn a living in their homes. Of the 160 million individuals living in Bangladesh, 81% live on less than \$2 a day, and 50% live on less than \$1.25 a day.<sup>126</sup> Three-quarters of the population live in environmentally sensitive rural regions, and half of the rural homes live without land.

Nearly 80% of the country's entire region is susceptible to flooding<sup>127</sup>. Changing rain patterns could leave some regions of Bangladesh under water and others without sufficient water for electricity, irrigation or drinking as soon as 20 to 30 years from now. With an increase of 65 centimeters in sea level by 2080, 40% of productive soil is expected to be lost in the southern area.<sup>128</sup> Increasing sea levels along with more frequent and intense cyclones and storm surges could increase groundwater and surface water contamination and contribute to health

---

<sup>124</sup> See generally, Government of the People's Republic of Bangladesh, *Climate Change and Bangladesh* (September 2007), [http://www.bdresearch.org.bd/home/climate\\_knowledge/cd1/pdf/Bangladesh%20and%20climate%20change/Climate%20change%20impacts%20vulnerability,%20risk/Climate%20Change%20And%20Bangladesh.pdf](http://www.bdresearch.org.bd/home/climate_knowledge/cd1/pdf/Bangladesh%20and%20climate%20change/Climate%20change%20impacts%20vulnerability,%20risk/Climate%20Change%20And%20Bangladesh.pdf). (accessed July 03, 2019); Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2007: Impacts, Adaptation and Vulnerability: Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2008) Ch 10.

<sup>125</sup> Disruptions to agriculture lead to higher food prices. The Economist Intelligence Unit's Bangladesh Country Report of February 2008 stated that the price of the staple food, rice, had nearly doubled since January 2007 following floods and a cyclone: 'Country of Origin Information Report: Bangladesh' (UK Border Agency, 11 August 2009) para 2.03

<sup>126</sup> "Country Briefing: Bangladesh: Multidimensional Poverty Index (MPI) at a Glance," *Oxford Poverty and Human Development Initiative*. July, 2010, <http://www.ophi.org.uk/>. (accessed July 03, 2019).

<sup>127</sup> Anne-Katrien Denissen, "Climate Change & its Impacts on Bangladesh," *NCDO*. April, 2012, <http://www.ncdo.nl/artikel/climate-change-its-impacts-bangladesh>. (accessed July 03, 2019).

<sup>128</sup> "Warming Climate to Hit Bangladesh Hard with Sea Level Rise, More Floods and Cyclones, World Bank Report Says," *World Bank News*, June, 2013, <https://www.worldbank.org/en/news/press-release/2013/06/19/warming-climate-to-hit-bangladesh-hard-with-sea-level-rise-more-floods-and-cyclones-world-bank-report-says>. (accessed July 03, 2019).

problems and illnesses. Bangladesh already depends on groundwater to drink because the rivers are so polluted that it would be disastrous for the nation to contaminate the drinking water. It is also essential to understand that Bangladesh is one of the states most susceptible to climate change effects, yet only 0.3% of the greenhouse gas emissions that drive climate change are produced.<sup>129</sup>

Because of the V-shaped Bay of Bengal, which funnels storms directly into Bangladesh, they have already encountered catastrophic cyclones in latest years. The latest and most devastating was Cyclone Aila in 2009, which, according to the Nansen Initiative, displaced more than 2 million individuals in India and Bangladesh. A prospective 2050 cyclone could expose more than 3 meters of flooding to 9.7 million individuals. Higher sea levels will contribute to more severe flooding, destroying infrastructure and livelihoods in some parts of the nation and leading to land loss. Scientists predict that climate change will inundate about 17% of Bangladesh's territory and displace about 18 million individuals over the next 40 years.<sup>130</sup> Bangladeshis already cross the frontier into India, leading to the need for active border control. However, if India already closes its frontier with the individuals of Bangladesh, it is hard to tell where they are going to seek shelter in the future. Because of the region's poverty, for many individuals, migration alternatives are restricted to neighboring nations.

Bangladesh, however, only adds meagerly to carbon emissions but has a very high price to pay. Millions of individuals suffer from cyclones, tidal surges, floods, water logging, intrusions of salt water, or river bank erosion year after year.

---

<sup>129</sup> Gardiner Harris, "Borrowed Time on Disappearing Land," *New York Times News*, March, 2014, <https://www.nytimes.com/2014/03/29/world/asia/facing-rising-seas-bangladesh-confronts-the-consequences-of-climate-change.html>. (accessed July 03, 2019).

<sup>130</sup> *ibid*

Day after day, internal migration is increasing. Case studies reveal that the proportion of migrants rises after a sudden onset of disasters such as hurricanes or tidal surges in the coastal belt. More than one million individuals, for instance, lose their homes or land each year to river erosion. In addition, extremely qualified migration from Bangladesh is likely to increase as inner rural-urban movement places severe pressure on towns such as Dhaka's infrastructure, 'pushing' those who can (the comparatively rich and well-educated) move overseas.<sup>131</sup>

Displacement is predominantly located within Bangladesh owing to sudden occurrences. People tend to relocate very short distances and try to return as quickly as possible to their homes, although this is sometimes impossible when regions are constantly flooded..<sup>132</sup>

Temporary migration provides a 'safety net' by creating alternative livelihood possibilities and enabling remittances to be returned to the surviving members of the family. Much is rural-rural,<sup>133</sup> especially during periods of elevated demand for agricultural labor.<sup>134</sup> Rural-urban migration is also prevalent and is probable to be increasingly so due to 'absence of accessible land, elevated population density, and year-round job shortages across rural Bangladesh, linked to the 'pull' factor of job prospects in urban regions'..<sup>135</sup>

The Guiding Principles could provide a blueprint for Bangladesh to assist and protect individuals internally displaced by climate effects within the framework of the rule of law and a framework based on human rights. Countries like Colombia have integrated significant

---

<sup>131</sup> Confirmed in interview with Saber Chowdhury MP (n 11).

<sup>132</sup> See IOM (n 10) 12

<sup>133</sup> Especially for women who marry elsewhere: IOM (n 10) 23

<sup>134</sup> *ibid*

<sup>135</sup> *ibid*, referring to Rita Afsar, 'Internal Migration and the Development Nexus: The Case of Bangladesh' (Refugee and Migratory Movements Research Unit, Dhaka and DFID, 2003).

[http://www.migrationdrc.org/publications/working\\_papers/WP-C2.pdf](http://www.migrationdrc.org/publications/working_papers/WP-C2.pdf). (accessed July 03, 2019).

components of the Guiding Principles into domestic law in other situations, while Africa now has a regional IDP protection treaty.<sup>136</sup>

As a nation that has not ratified the Convention on Refugees, Bangladesh may be in a comparatively fragile political situation if it wants to indicate that other nations have a duty to safeguard their displaced individuals due to climate change.<sup>137</sup>

Such migrants are primarily on temporary agreements in semi- and low-skilled employment that offers little prospect of possible inclusion. Although they are not Bangladesh's poorest group, they have very restricted funds and choose migration as a livelihood approach.<sup>138</sup> Working abroad offers a way of enhancing the financial and social status of the family and can provide a short-term strategy for securing marriage or instructional prospects in this respect.<sup>139</sup>

## 4.2. Tuvalu

Tuvalu ranks among the "least advanced nations," and its economy relies mainly on the public sector; the nation exports no products, and all agricultural operations are restricted owing to the soil's salinity. The nation depends heavily on foreign aid primarily from New Zealand, Australia, and the United Kingdom.<sup>140</sup> Because of the restricted job opportunities at home, many Tuvaluans have traditionally traveled abroad (primarily New Zealand) to create a better living: it was estimated that more than a third of the people of the countries lived overseas back

---

<sup>136</sup> African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 22 October 2009 (Kampala Convention, not yet in force), Art 5(4).

<sup>137</sup> Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, read in conjunction with the Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.

<sup>138</sup> Rashid (n 123) 165 and citations

<sup>139</sup> *ibid*, 166. Although as Julca (n 83) 42 notes, 'immigrants working in the low ranked occupations often end up reproducing underlying labor market inequalities at destinations'

<sup>140</sup> A Trust Fund established in 1987 by the UK, Australian and New Zealand represents about 25% of the Tuvalu's GDP

in the early 1970s.<sup>141</sup> According to some estimate, the likelihood of sea level change between 1.1 and 2.7 mm / year is about 68 percent. Some scientists say that by 2050 Tuvalu will be virtually uninhabitable.<sup>142</sup> There are many variables that profoundly attach the Tuvaluans to their territory, their families, and their culture. About 42% of the inhabitants in Tuvalu live in Funafuti, the capital and only metropolitan center.<sup>143</sup> Internal migration to the middle is high owing to enhanced reliance on imported food, as agricultural production in national subsistence has declined.<sup>144</sup> The same as Kiribati, long-term inner resettlement has no high ground. Frankly, Christianity is another significant characteristic of the residents of the island, since the majority believe that God will not allow anything to occur to Tuvalu and are therefore unwilling to leave the island.<sup>145</sup>

The situation with Tuvalu's tiny coral atoll country could be an ideal instance to see the issue of climate refugees from a very distinct view. A Polynesian island state consisting of nine distinct islands in the South Pacific Ocean distributed over a large region with a total of only about 10,000 inhabitants has attracted much attention with its distinctive climate change and sea-level rise scenario.

The UN does not regard Tuvaluans as refugees, however. Despite all the debates about the importance of filling the gaps in the global legal system that affect “forcibly displaced

---

<sup>141</sup> Colette Mortreux, Jon Barnett, *Climate change, migration and adaptation in Funafuti, Tuvalu*, Global Environment Change 19, 2009, 105-112.

<sup>142</sup> Pacific Adaptation to Climate Change: Tuvalu, Report of In-Country Consultations, p. 7 <http://www.sprep.org/att/irc/ecopies/countries/tuvalu/49.pdf>. (accessed July 03, 2019).

<sup>143</sup> It has a population density of 1,610 people per square kilometer, compared to the outer islands where it is only 222 people per square kilometer: Tuvalu NAPA (n 33) 6. As Connell observed in 2003, the concentration of public sector employment on the main island of Funafuti ‘has resulted in rapid internal migration and urbanization’, and it accommodates almost half of Tuvalu’s population: Connell (n 18) 93. See further, John Connell and John P Lea, *Urbanization in the Island Pacific: Towards Sustainable Development* (Routledge, 2002)

<sup>144</sup> For example, it is reported that 60 per cent of pulaka pit plantations in Tuvalu have already been destroyed by salt-water intrusion, and the remaining 40 per cent remain highly sensitive to it: Tuvalu NAPA (n 33) 28

<sup>145</sup> EACH-FOR Environmental Change and Forced Migration Scenarios, F. Gemenne and S. Shen, ‘Tuvalu and New Zealand: Case Study Report’, 2007, p. 24

persons,” The UN's action on the Tuvalu situation was seen as ineffective. The fact that the Tuvaluan government's stance resisted the inclusion of ' relocation ' in global contracts has also complicated it and has been stating a couple of times that “Tuvaluans will remain in Tuvalu”<sup>146</sup> and the developed countries were called upon to decrease their emissions by the request of the Tuvaluans.

As can be seen, by Australia and New Zealand's efforts to tackle the issue of possible Tuvaluans displacement, there is still a lack of the functioning regional legal framework. The same can be said about the EU's regional operations: it has concentrated primarily only on the elements of sustainable development. Within the 9th European Development Fund (EDF), for instance, a grant of €3.3 million has been contributed to fund the Outer Island Social Development Support Programme (OISDSP).<sup>147</sup> Despite the assistance that Tuvalu receives from the EU, it is noteworthy that Europe is much less interested in collaboration and does not generally assist Tuvalu in terms of emission reductions and accountability for climate change.<sup>148</sup>

It is therefore obvious that in the situation of Tuvalu, several factors should be taken into account in order to create efficient strategies. First, it will be nearly impossible to differentiate between those who migrate because of climate change or because of social or financial issues. Second, Basic resettlement of Tuvaluans cannot be regarded as an alternative: Tuvaluans are too attached to their territory, and the nation's right to remain in their country of origin must be respected. Third, its issue with the Tuvaluans cannot be seen solely at the

---

<sup>146</sup> Jane McAdam, ‘Swimming against the Tide: Why a Climate Change Displacement Treaty is not the Answer’, *International Journal of Refugee Law* 23(1), 2011, 15.

<sup>147</sup> Migration (Climate Refugees) Amendment Bill 2007, <http://www.comlaw.gov.au/Details/C2007B00149>. (accessed July 03, 2019).

<sup>148</sup> Robert S. Eshelman, “What is the EU's Position on a Legally-Binding Agreement?”, *Tree Hugger*. 2009, <http://www.treehugger.com/corporate-responsibility/what-is-the-eus-position-on-a-legally-bindingagreement.html>. (accessed July 03, 2019).

national level, since it is also linked to calls from vulnerable populations to decrease emissions and advanced countries' willingness to do so. The governments of Kiribati and Tuvalu actively lobbied nations in the region for migration possibilities long before climate change became a matter of concern.<sup>149</sup>

By the early 2000s, migration aid lobbying was replaced by the world's first 'climate refugees' as a sudden, urgent request,<sup>150</sup> and Tuvalu's lengthy history of migration has been overlooked. In the fresh narrative of 'climate displacement,' the background of overcrowding, resource limitations, and other socio-economic pressures was completely ignored.

The Tuvaluan government approached Australia in July 2001 asking for unique immigration help to allow some of its people to move due to the effects of climate change.<sup>151</sup> Climate change is slowly eroding the habitability of the regions. Both Kiribati and Tuvalu are experiencing significant overcrowding, which will only worsen as the population rises naturally. As individuals become more dependent on imported processed foods, there are also adverse health effects.<sup>152</sup> The same year, Tuvalu allegedly negotiated with Fiji to buy a

---

<sup>149</sup> Note the Pacific Islands Forum, when Niue offered to resettle a small number of Tuvaluan families. Since the people of Niue are New Zealand citizens, these families were ultimately able to acquire New Zealand citizenship: interview with Enele Sopoaga, Secretary for Foreign Affairs, Tuvalu (n 12)

<sup>150</sup> See Connell (n 92) 97–9. See also Carol Farbotko, 'Tuvalu and Climate Change: Constructions of Environmental Displacement in the Sydney Morning Herald' (2005) 87 *B Geografiska Annaler* 27

<sup>151</sup> Senate Foreign Affairs, Defence and Trade Committee, *A Pacific Engaged: Australia's Relations with Papua New Guinea and the Island States of the South- West Pacific* (Commonwealth of Australia, 2003) para 6.78. See also David Wroe, 'Australia Refuses to Throw Lifeline to Drowning Tuvalu', *Sydney Morning Herald*, (19 July 2001), [http://clickthrough.net/bboard/q-and-a-fetch-msg.tcl?msg\\_id=005oMF](http://clickthrough.net/bboard/q-and-a-fetch-msg.tcl?msg_id=005oMF). (accessed July 03, 2019), which quotes Tuvalu's Acting Secretary for Foreign Affairs and Trade, Mr Pusinelli Lafai, as saying: 'the statement was hardly out of their [the delegates'] mouths before the Australian delegation shut it up . . . Australia is absolutely against opening up any dialogue.' The Department of Immigration and Multicultural and Indigenous Affairs stated: 'While Australia is committed to fulfilling its humanitarian obligations as a member of the international community, it should give priority to those who require assistance urgently. The threat to Tuvalu's population from a possible rise in sea- level would appear to be a long- term one which should be monitored closely but is not one that requires urgent action at this time': Submission of the Department of Immigration and Multicultural and Indigenous Affairs (Submission No 44) to Senate Foreign Affairs, Defence and Trade References Committee Inquiry into Australia's Relationship with Papua New Guinea and Other Pacific Island Countries (July 2002) para 3.51. The report of the Committee suggests that 'long-term' was envisaged as 30 to 40 years: Senate Committee Report, para 6.79

<sup>152</sup> Jane McAdam, *Climate Change, Forced Migration and International Law* (New York: Oxford University Press, 2012), 34-57.

significant area of territory.<sup>153</sup> Of 2008, it was revealed that the Tuvaluan Prime Minister met secretly with Australian government officials to discuss a strategy for ' Tuvalu to be based in Australia but to remain a sovereign nation ', in the hope that one day they will return to their island. The government of Tuvalu would continue to exercise its economic exclusion zone of approximately one million square kilometers and keep its seat and vote at the UN.<sup>154</sup> The Tuvalu government now sees relocation as a last resort because individuals should not have to leave their homes, particularly as they are 'amongst the lowest contributors to factors causing climate change.'<sup>155</sup>

According to Jane McAdam, whereas the notion of ' environmental ' or ' climate change ' refugees can be a helpful advocacy instrument to attract attention and mobilize civil society to address the hazards of global warming, it may also lead to misunderstandings of the probable patterns, timing, and nature of climate change-related motion. The fact that refugees flee their government, while Tuvalu's individuals have no desire to escape their country. They claim that it is other states ' actions that will eventually force their movement, not their own leaders ' actions.<sup>156</sup>

As international law does not involve a minimum size of the land of a State, nor is there a minimum requirement of the population.<sup>157</sup> In fact, after the Vatican, Tuvalu is the second lowest state by population. The concept of a ' permanent ' population means it cannot be

---

<sup>153</sup> Greg Bearup, 'Enterprise Island', Sydney Morning Herald Good Weekend magazine (Sydney, 5 May 2001) 44–7, cited in Connell (n 18), 95.

<sup>154</sup> Crouch (n 164).

<sup>155</sup> The Niue Declaration on Climate Change, 39th Pacific Islands Forum, Forum Communiqué, Annex B (19–20 August 2008), 23.

<sup>156</sup> Jane McAdam, *Climate Change, Forced Migration and International Law* (New York: Oxford University Press, 2012), 40.

<sup>157</sup> On this point, see Thomas M Franck and Paul L Hoff man, 'The Right of Self- Determination in Very Small Places' (1976) 8 New York University Journal of International Law and Politics 331, 383: 'infinitesimal smallness has never been seen as a reason to deny self- determination to a population'. On the position of the Vatican, see Jorri C Duursma, *Fragmentation and the International Relations of Micro-States: Self-Determination and Statehood* (Cambridge University Press, 1996) 374, 411–12



temporary. Therefore, Shaw asserted that ‘a nomadic population might thus not count for territorial sovereignty.’<sup>158</sup> The relevant question for the present purposes is whether a State ceases to fulfill this criterion of statehood when a large proportion – or all – of its population lives outside the territory of the State. Then it can be seen as if the state of Tuvalu is gone, like it or not, Tuvaluans may fall into the status of a stateless person or refugee.

---

<sup>158</sup> Malcolm N Shaw, *International Law* (Cambridge University Press, 2008), 199.

## CONCLUSION

The effects of climate change have already been seen by frequent droughts and heavy rainfall, rising sea levels, and global warming. More individuals are compelled to relocate or escape these unbearable conditions.

Thus, those who lack the ability to move, even if they may want to migrate must be careful. In a highly vulnerable environment, certain kinds of environmental stressors and shocks, including sudden climate-related events, can lead to 'traps,' such as keeping individuals in precarious economic circumstances or living in hazardous places.

There are studies about whether the world should legalize those displaced persons by climate change as a refugee or migrant. There has been a steady source of research surrounding this topic by Jane McAdam. She argues in which the people who are displaced, such as those from Kiribati and Tuvalu should be globally recognized and legally protected under the term of migrants. Because this will protect their human rights better than being a refugee, and migration should be seen as an adaptive strategy for employment opportunities and better income so they can support their family who remains in their home country while facing droughts, floods, etc. This is contrary to what Hugo states in which the status of being a migrant and a refugee should be studied and identified clearly whether it is 'forced' or 'voluntary.' Adamo claims that migration as adaptation should be used only for slow-onset events. This argument, whether each of these terms should be considered over one another, does not make sense to me. I believe both of these terms should be considered by state and international levels to create a protection mechanism adequately for climate migrants (in the situations of slow-onset events) and without political motive but based on human rights approach. For individuals who are impacted by sudden onset hazards (in the case that their governments are not able to provide assistance so

migrate internally would not be a better chance to receive the enjoyment of life, right to life and employment opportunities).

Moreover, recognizing climate refugee status would be essential legal protection for those who are affected by sea level rising in which their home countries might face the loss of physical territory, and they can become stateless persons in the near future. In this case, migration as an adaptation might not be useful for the host countries to suddenly, accept mass migration from those impacted countries. Hence, the international legal framework should take action from now on, to decide whether which states can be counted as host countries, how many displaced persons they can accept? And how they can accommodate those people? Those measures should be studied specifically on the amount of how much the host countries (industrialized countries) contribute to the emission of carbon dioxide and greenhouse gases which lead to man-made disasters (climate change) as mentioned in the European Convention of Human Rights in Article 2.

The word ' climate refugee ' or the word ' environmental refugee ' is not legally recognized at the moment. As El-H Innawi and Nansen Initiative claims in which 'environmental refugee' should be used due to this terminology would cover both those who are impacted by natural disasters and climate change disasters. In my opinion, this could make sense, though by using this terminology would not be wise since natural disasters can happen everywhere and most movements would occur internally; it does not need much international attention, and it is under each state jurisdiction and responsibility. Climate change refugee should be a separated term to use globally because it can be known as man-made disasters by industrialized states. In addition to that, this deserves international severe attention to lower carbon and greenhouse gases emission, and seek an adequate policy or a prevention or protection mechanism for those impacted countries 'sinking islands' such as Kiribati, Tuvalu and other in the Pacific who have

a lot to lose at stake. In response to the argument, that climate refugee should not be recognized due to the Refugee Convention. I argue in which the Convention was established almost 70 years ago, the scientific research of whether the climate change has been resulting in such matters was not widely known back in the day, and the law should be developed and amended over the period.

Slow-onset effects of climate change do not attract the same amount of attention from policymakers and the media as sudden events like cyclones, heat waves, or floods. For example, riverbank erosion, which can occur very quickly and it may have a more profound impact on people's lives and livelihoods (because erosion causes property losses in a manner that floods usually do not) and has not attracted the same amount of media or public attention as the more extreme events.

The following policy recommendations on displaced individuals and climate change should be framed by a conscious comprehension of cultural affinity as transmitted through generations and taking into consideration demographic information, including income, age, and gender. The input gained from the research should, therefore, not only provide the foundation for the formation of views by individuals but should also prompt action to resettle those who have already become climate refugees.

## RECOMMENDATION

As suggested by the Nansen Initiative in 2015 in which every \$1 spent on disaster preparedness results in \$3 to \$4 saved after a disaster strikes.<sup>159</sup> Therefore it makes sense to act now, and I agree entirely on that. Hence, approaches in response to climate refugee protection need to be proactive, not merely therapeutic, and extensive, multi-sector methods are crucial. A single-size strategy to climate change will be insufficient.

Support will be required to decrease migration through a range of measures including food safety, social protection and health, catastrophe management, infrastructure, and institutional growth. Political recognition is required to tackle the problem of climate refugees correctly, and regional collaboration is required to promote international migration. Climate-related migration is recognized as a problem to be addressed by nations as part of adaptation measures. Even so, due to environmental modifications or disasters, there is no specific protection for displaced persons. UNFCCC needs a coordinated strategy, and the most vulnerable nations should encourage UNFCCC to take action to compensate and ensure climate refugees. Adequate preparing for climate refugees may decrease the probability of climate change, but some measures need to be taken to achieve this.

Action 1: create an eco-induced displacement surveillance scheme. This will be a better argument when it comes to promoting global climate refugee protection mechanism.

Action 2: the global framework for the classification of climate migrant and climate refugee must be established and enforced, together with their freedoms, national duties, and the processes to be followed. This should be achieved by UNHCR, as it is the UN organization that

---

<sup>159</sup> “Every \$1 Invested in Disaster Mitigation Saves \$6,” *PEW Trust*. January 11, 2018, [https://www.pewtrusts.org/en/research-and-analysis/articles/2018/01/11/every-\\$1-invested-in-disaster-mitigation-saves-\\$6](https://www.pewtrusts.org/en/research-and-analysis/articles/2018/01/11/every-$1-invested-in-disaster-mitigation-saves-$6). (accessed July 03, 2019).

is accountable for the situation of refugees and has the funds to do so in extending the definition of refugee in the 1951 Refugee Convention. It should also state which countries will be responsible for accepting displaced persons by climate change, is it all industrialized countries? How many they can receive each year, and how they can accommodate them? Also, these measures should be clarified depend on the amount of the host countries (industrialized countries) contribution to the emission of carbon dioxide and greenhouse gases.

Action 3: United Nations should create a policy in which protect those who are displaced in two separated statuses as ‘climate refugee’ and ‘climate migrant’ (in the case of adaptation).

Action 4: the ranking scheme should also be set up to determine which countries should be given priority over other nations for international aid. States that are more threatened should be a priority for international aid and adaptation and mitigation aid to avoid a climate refugee crisis. Measures for adaptation should include mechanisms for poverty reduction, reforestation programs, and other livelihoods through extended employment possibilities.

Action 5: Facing abrupt climate change policies should be reinforced in a multitude of ways, including training and consciousness, better education, diversification of livelihood alternatives, community-led natural resource management, and efficient catastrophe risk management capable of reducing vulnerability and enhancing climate change management capabilities in state level

## BIBLIOGRAPHY

- 39<sup>th</sup> Pacific Islands Forum. *The Niue Declaration on Climate Change*. Niue: 2008.
- Adamo, Susana. *Environmentally Induced Population Displacements*. The Center for International Earth Science Information Network, 2009.
- Adamo, Susana. *Vulnerable People in Fragile Lands: Migration and Desertification in the Drylands of Argentina*. Austin: University of Texas, 2003.
- Afsar, Rita. *Migration DRC*. [http://www.migrationdrc.org/publications/working\\_papers/WP-C2.pdf](http://www.migrationdrc.org/publications/working_papers/WP-C2.pdf). (accessed July 03, 2019).
- Anwer Saudi. *Analysis 30, Climate Refugees in Bangladesh: Understanding the Migration Process at the Local Level*. Stuttgart: Brot für die Welt, 2012.
- Asia Development Bank. *ADB*.  
<https://www.adb.org/sites/default/files/publication/29662/addressing-climate-change-migration.pdf>. (accessed July 03, 2019).
- Astri, Suhrke. *Pressure Points: Environmental Degradation, Migration and Conflict. Workshop on Environmental Change, Population Displacement, and Acute Conflict*. Ottawa: University of Toronto and The American Academy of Arts and Sciences, 1993.
- Australian Government, Department of the Environment and Energy. *2017 Review of Climate Change Policies*. 2017. Commonwealth of Australia.
- Biermann, Frank, and Ingrid Boas. *Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees*. Global Environmental Politics, 2010.
- Bilsborrow, Richard. *Rural Poverty, Migration, and the Environment in Developing Countries: Three Case Studies*. Washington: The World Bank, 1992.
- Blunden, Jessica, and Derek Arnt. *State of the Climate*. 2016.
- Brenner, Jason, and Lori Hunter. *Population Reference Bureau*.  
<https://assets.prb.org/pdf14/migration-and-environment.pdf>. (accessed July 03, 2019).
- Byrne, Rosemary, Gregory Noll, and Jens Vedsted-Hansen. *New Asylum Countries? Migration Control and Refugee Protection in an Enlarged European Union*. The Hague: Kluwer Law International, 2002.
- Byravan, Sujatha, and Sudir Chella Rajan. *Providing New Homes for Climate Change Exiles*. Climate Policy, 2006.
- Bzoka, Michael, and Christiane Fröhlich. *Climate Change, Migration and Violent Conflict: Pathways, Vulnerabilities and Adaptation Strategies*. Hamburg: Institute for Peace Research and Security Policy at Hamburg University.
- Coinsbee, Molly, and Andrew Simms. *Environmental Refugee: The Case for Recognition*. London: New Economics Foundation, 2003.
- Council of European Union. *Outcome of the Proceedings of Working Party on Asylum*. 2011.

- Denissen, Anne-Katrien. *NCDO*. <http://www.ncdo.nl/artikel/climate-change-its-impacts-bangladesh>. (accessed July 03, 2019).
- Department of Immigration New Zealand. *Immigration New Zealand*. <http://www.immigration.govt.nz/migrant/stream/live/pacificaccess/>. (accessed July 03, 2019).
- Docherty, Bonnie, and Tyler Giannini. *Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees*. Harvard Environmental Law Review, 2009.
- Đurková, Petra, Anna Gromilova, Barbara Kiss, and Megi Plaku. *Climate Refugees in the 21<sup>st</sup> Century*. Regional Academy on the United Nations, 2012.
- El-Hinnawi, Essam. *Environmental Refugees*. United Nations Environmental Programme, 1985.
- Eshelman, S. Robert. *Tree Hugger*. <http://www.treehugger.com/corporate-responsibility/what-is-the-eus-position-on-a-legally-binding-agreement.html>. (accessed July 03, 2019).
- European Parliament, Directorate-General for Internal Policies. *U.S. Climate Change Policy*. 2015.
- European Parliament. *Europa*. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A5-20020333+0+DOC+PDF+V0//EN>. (accessed July 03, 2019).
- European Parliament. *Climate Refugees: Legal and Policy Response to Environmentally Induced Migration*. 2011.
- European Union. *European Convention on Human Rights*. Rome: 1950.
- Evans, Gareth, et al. *The Responsibility to Protect, 'International Commission on Intervention and State Sovereignty*. 2001.
- Goodwin-Gill, S Guy, and Jane McAdam. *UNHCR & Climate Change Disasters and Displacement*. United Nations High Commissioner for Refugees, 2017.
- Government of Australia. *Commonwealth Law*. <http://www.comlaw.gov.au/Details/C2007B00149>. (accessed July 03, 2019).
- Government of Malawi, Ministry of Natural Resources, Energy and Mining. *National Climate Change Management Policy*. 2016.
- Government of the People's Republic of Bangladesh. *Bangladesh Research*. [http://www.bdresearch.org.bd/home/climate\\_knowledge/cd1/pdf/Bangladesh%20and%20climate%20change/Climate%20change%20impacts%20,vulnerability,%20risk/Climate%20Change%20And%20Bangladesh.pdf](http://www.bdresearch.org.bd/home/climate_knowledge/cd1/pdf/Bangladesh%20and%20climate%20change/Climate%20change%20impacts%20,vulnerability,%20risk/Climate%20Change%20And%20Bangladesh.pdf). (accessed July 03, 2019).
- Graeme, Hugo. *Environmental Concerns and International Migration*. SAGE, 1996.
- Guterres, António. *The Guardian*. <https://www.theguardian.com/environment/2008/jun/17/climatechange.food>. (accessed July 03, 2019).



- Harris, Gardiner. *New York Times News*.  
<https://www.nytimes.com/2014/03/29/world/asia/facing-rising-seas-bangladesh-confronts-the-consequences-of-climate-change.html>. (accessed July 03, 2019).
- Internal Displacement Monitoring Centre. *Internal Displacement*. <http://www.internal-displacement.org/database>. (accessed July 03, 2019).
- International Organization for Migration. *IOM Publications*.  
[http://publications.iom.int/bookstore/free/migration\\_and\\_environment.pdf](http://publications.iom.int/bookstore/free/migration_and_environment.pdf). (accessed July 03, 2019).
- Intergovernmental Panel on Climate Change. *IPCC*.  
[https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-Chap13\\_FINAL.pdf](https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-Chap13_FINAL.pdf).  
(accessed July 03, 2019).
- Intergovernmental Panel on Climate Change. *IPCC*.  
[https://www.ipcc.ch/site/assets/uploads/2018/05/SYR\\_AR5\\_FINAL\\_full\\_wcover.pdf](https://www.ipcc.ch/site/assets/uploads/2018/05/SYR_AR5_FINAL_full_wcover.pdf).  
(accessed July 03, 2019).
- Ionesco, Dina. *International Organization of Migration*. <http://weblog.iom.int/migration-adaptation-strategy-climate-change>. (accessed July 03, 2019).
- Islam, Muinul. *York University*. <file:///C:/Users/Thida%20Oum/Downloads/21639-Article%20Text-22051-1-10-20090424.pdf>. (accessed July 03, 2019).
- Jakobeit, Cord, and Chris Methmann. *Climate Refugees 'as A Dawning Catastrophe? A Critique of the Dominant Quest for Numbers*. Berlin: Springer, 2012.
- Jakobsson, Elin. *Global Policy Making on Climate Refugees: What is the Problem?* 2010.
- Kälin, Walter, and Nina Schrepfer. *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches*. Study for the Swiss Ministry of Foreign Affairs, 2011.
- Kibreab, Gaim. *Climate Change and Human Migration: A Tenuous Relationship?* Oxford University Press, 2009.
- Mary Robinson Foundation-Climate Justice in Consultation with the Core Drafting Group. *Discussion Paper: Human Rights, Migration, and Displacement Related to the Adverse Impacts of Climate Change*. 2016. McAdam, Jane. *Climate Change, Forced Migration, and International Law*. New York: Oxford University Press, 2012.
- McAdam, Jane. *Climate Change and Displacement: Multidisciplinary Perspective*. Oxford: Hart Publishing, 2010.
- McAdam, Jane. *Climate Change Refugees and International Law*. NSW Bar Association, 2007.
- McAdam, Jane. *Swimming against the Tide: Why a Climate Change Displacement Treaty is not the Answer*. *International Journal of Refugee Law*, 2011.
- Methmann, Chris, and Agela Oles. *From 'fearing' to 'empowering' Climate Refugees: Governing Climate-Induced Migration in the Name of Resilience*. Security Dialogue, 2015.

- Morrissey, James. *Rethinking the 'Debate on Environmental Refugees': from 'Maximalists and Minimalists' to 'Proponents and Critics'*. University of Oxford, 2012.
- Mortreux, Colette, and Jon Barnett. *Climate change, migration and adaptation in Funafuti, Tuvalu*. *Global Environment Change* 19, 2009.
- Myers, Norman. *Environmental Refugees: An Emergent Security Issue*. Prague: 13<sup>th</sup> Economic Forum, 2005.
- Nachmany, Michael, and Joana Setzer. *Policy Brief, Global Trends in Climate Change Litigation: 2018 Snapshot*. Grantham Research Institute on Climate Change and the Environment, 2018.
- Osterhus, Leigh. *The Need for International policy for Environmental Refugees*. San Luis Obispo: California Polytechnic State University, 2015. Oxford Poverty and Human Development Initiative. *OPHI*. <http://www.ophi.org.uk/>. (accessed July 03, 2019).
- PEW Organization. *PEW Trusts*. [https://www.pewtrusts.org/en/research-and-analysis/articles/2018/01/11/every-\\$1-invested-in-disaster-mitigation-saves-\\$6](https://www.pewtrusts.org/en/research-and-analysis/articles/2018/01/11/every-$1-invested-in-disaster-mitigation-saves-$6). (accessed July 03, 2019).
- Piguet, Etienne. *From 'Primitive Migration' to 'Climate Refugees': The Curious Fate of the Natural Environment in Migration Studies*. *Annals of the American Geographers* 103, 2013.
- Ravenstein, Georg. *The Laws of Migration*. Wiley for the Royal Statistical Society, 1889.
- Republic of Zambia, Ministry of National Development Planning. *National Policy on Climate Change*. 2016.
- Shaw, N. Malcolm. *International Law*. Cambridge University Press, 2008.
- Shen, Jianfa. *Increasing Internal Migration in China from 1985 to 2005: Institutional Versus Economic Drivers*. Hong Kong: Elsevier, 2012.
- South Pacific Regional Environment Programme. *SPREP*. <http://www.sprep.org/att/irc/ecopies/countries/tuvalu/49.pdf>. (accessed July 03, 2019).
- Stapleton, Sarah, Rebecca Nadin, Charlene Watson, and Jan Kellett. *Climate Change, Migration and Displacement: The Need for A Risk-Informed and Coherent Approach*. Overseas Development Institute and United Nations Development Programme, 2017.
- The Nansen Conference 2011. *The United Nations High Commissioner for Refugee*. <https://www.unhcr.org/4ea969729.pdf>. (accessed July 03, 2019).
- The Nansen Initiative. *Nansen Initiative*. <https://nanseninitiative.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf>. (accessed July 03, 2019).
- The University of Oxford. *Refugee Studies Center*. <https://www.rsc.ox.ac.uk/publications/policy-briefings/RSCPBI-Environment.pdf>. (accessed July 03, 2019).
- United Nations University. *UNU Collection*. <https://collections.unu.edu/eserv/UNU:1837/pdf11213.pdf>. (accessed July 03, 2019).

- United Nations. *UN*. [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/64/350](http://www.un.org/ga/search/view_doc.asp?symbol=A/64/350). (accessed July 03, 2019).
- United Nations Framework on Convention on Climate Change. *Cancun Adaptation Framework*. Cancun: 2010.
- United Nations General Assembly. *New York Declaration for Refugee and Migrant*. New York: 2016.
- United Nations General Assembly. *The Sendai Framework for Disaster Risk Reduction*. Sendai: 2015.
- United Nations High Commissioner for Refugee. *UNHCR*. <http://www.unhcr.org/4d05ecf49.pdf>. (accessed July 03, 2019).
- United Nations High Commissioner for Refugee. *United Nations*. <http://daccess-ddsny.un.org/doc/UNDOC/GEN/G10/145/69/PDF/G1014569.pdf?OpenElement>. (accessed July 03, 2019).
- United Nations High Commissioner for Refugee. *UNHCR*. <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=4f33f1729&query=Climate%20change,%20natural%20disasters%20and%20human%20displacement>. (accessed July 03, 2019).
- United Nations. *International Covenant on Economic, Social, and Cultural Rights*. New York, 1966.
- United Nations. *International Covenant on civil and Political Rights*. New York: 1966.
- United Nations. *Refugee Convention*. Geneva: 1951.
- United Nations Security Council. *UN*. <http://www.un.org/News/Press/docs/2011/sc10332.doc.htm>. (accessed July 03, 2019).
- United Nations Security Council. *Security Council Report*. <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C8CD3-CF6E4FF96FF9%7D/Ener%20SPV%205663.pdf>. (accessed July 03, 2019).
- United Nations Secretary-General. *The United Nations High Commissioner for Refugee*. <http://www.unhcr.org/refworld/pdfid/4ad5e6380.pdf>. (accessed July 03, 2019).
- Vogt, William. *How They Became the Human Face of Climate Change: Research and Policy Interactions in the Birth of the “Environmental Migration” Concept*. Cambridge University Press and UNESCO, 2011.
- Williams, Angela. *Turning the Tide: Recognizing Climate Change Refugees in International Law*. *Law & Policy* 30, 2008.
- Wilkinson, Emily, Amy Kirbyshire, Leigh Mayhew, Pandora Batra, and Andrea Milan. *Overseas Development Institute*. <https://www.odi.org/publications/10594-climate-induced-migration-anddisplacement-closing-policy-gap>. (accessed July 03, 2019).
- World Bank Report. *World Bank News*. <https://www.worldbank.org/en/news/press-release/2013/06/19/warming-climate-to-hit-bangladesh-hard-with-sea-level-rise-more-floods-and-cyclones-world-bank-report-says> . (accessed July 03, 2019).