



Miguel Filipe Encarnação Guerreiro

**FILLING THE GAPS IN THE PROTECTION OF CLIMATE MIGRANTS: A
PROPOSAL FOR A MULTITRACK APPROACH IN INTERNATIONAL LAW**

Dissertation to obtain a Master's Degree in Law,
in the specialty of Social Law and Innovation

Supervisor:

Doctor Laura Íñigo Álvarez, Professor at Nova School of Law

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Anti-plagiarism statement

I declare that I am the sole author, and the use of contributions or texts of others is duly referenced (article 20-A of the 2nd Cycle Regulations and article 8 of the 3rd Cycle Regulations).

Acknowledgments

I would like to acknowledge the characteristics and circumstances I have fortunately been subjected to get this far.

To my parents, who are proof of endless support and love.

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List of Abbreviations

Climate Change and Resilience Platform (CARE)

Climate Change Displacement Organization (CCDO)

Free Movement Agreements (FMA)

Greenhouse Gases (GHGs)

Guiding Principles on Internal Displacement (GPID)

Immigration and Protection Tribunal (IPT)

Inter-Agency Standing Committee (IASC)

Internal Displacement Monitoring Centre (IDMC)

Internally displaced people (IDPs)

International Covenant on Civil and Political Rights (ICCPR)

International Covenant on Economic and Social Cultural Rights (ICESCR)

International Federation of Red Cross and Red Crescent Societies (IFRC)

Kyoto Protocol (KP)

Paris Agreement (PA)

Refugee Convention (RC)

Small Islands Developing States (SIDS)

UN Law of the Sea Convention (UNCLOS).

United Nations (UN)

United Nations Framework Convention on Climate Change (UNFCCC)

United Nations High Commissioner for Refugees (UNHCR)

United Nations Human Rights Committee (UNHRC)

Universal Declaration of Human Rights (UDHR)

Vienna Convention on the Law of Treaties (VLC)

Declaration

The body of the thesis, including spaces and notes, occupies a total of 198,984 characters.

The citation style utilized throughout this written piece was Chicago 16th Edition (full note).

Resumo

O Antropoceno, atual era da humanidade, revela os seres humanos como o fator precursor das alterações no clima do planeta Terra. As mudanças climáticas acarretam impactos territoriais, tais como fenômenos climáticos extremos, salinização do solo e aumento do nível do mar, comprometem a sobrevivência humana. Dados relativos à deslocação climática demonstram milhões de indivíduos que abandonaram as suas residências e nações de origem. Analistas apontam para um aumento de bilhões de pessoas deslocadas no futuro devido às consequências climáticas. Um novo grupo vulnerável surgiu, pessoas deslocadas no contexto das alterações climáticas. Indivíduos e famílias estão, e continuarão, a deslocar-se devido aos efeitos das mudanças climáticas, seja a nível transfronteiriço ou interno, voluntariamente ou forçadamente, de forma temporária ou permanente. O Direito Internacional não dispõe de mecanismos de proteção suficientes para esta nova tipologia de movimentos. Esta lacuna legal tem culminado na violação dos direitos humanos, recusa de pedidos de refúgio, proliferação de movimentos internos desprotegidos e originado uma potencial situação de apátrida. Entre a criação de um tratado multilateral, a assinatura de acordos regionais e o desenvolvimento de mecanismos soft-law, propostas para colmatar esta carência apresentam duas lacunas. A primeira consiste na compreensão incompleta dos movimentos climáticos, o que leva à indefinição dos indivíduos deslocados pelas mudanças climáticas. Os migrantes climáticos são designados como refugiados ou deslocados, o que cria uma barreira teórica e legal à contemplação de um instrumento de direitos protetores. A segunda imprecisão reside no isolamento das propostas em relação a outras abordagens dimensionais, o que revela falta de rigor na priorização das necessidades, gerando uma resposta única, sem considerar “como” ou “quando” deverá ser implementada. O inexplorado potencial de uma abordagem plural e oportuna em relação à migração climática constitui a base desta proposta, uma resposta tridimensional que contempla o que tem sido possível (mecanismos de soft-law), o que é necessário (acordos regionais) e o que seria desejável (acordo multilateral). Por meio desta cadência tripartida, é arguido que a comunidade internacional pode fornecer uma proteção viável e adequada para os direitos dos migrantes climáticos.

Palavras-chave: *alterações climáticas, migração climática, lacuna legal, Direito Internacional, abordagem multi-track*

Abstract

The Anthropocene, our current era, reveals humans as the precursor factor for alterations in the climate of planet Earth. Climate change leads to territorial impacts such as extreme weather phenomena, soil salinization and sea level rise which have precluded human survival. Data on human movements induced by climate change has revealed that millions of individuals left their homes and nations. Analysts point to an upscale within billions displaced over climate change consequences in the future. This has generated a new vulnerable group, people displaced in the context of climate change. Individuals and families are and will be moving due to climate change effects, whether that be cross-border or internal, voluntarily or forced, temporary or permanent. International Law does not provide sufficient protection mechanisms for this complex new typology of human movements. This legal absence has led to the violation of human rights, refusal of refugee applications, proliferation of unsafe internal movements and created a potential situation of statelessness. Between the creation of a multilateral agreement, the signing of regional accords and the development of soft law mechanisms, proposed answers to fill in this gap have two detrimental misses. The first is the incomplete assessment of climate-induced movements, which inevitably leads to the undefinition of individuals displaced by climate change. Climate migrants are often designated as refugees or displaced people, which creates a theoretical and legal barrier to the contemplation of a protective rights-based instrument. The second is the isolation of proposals toward other dimensional approaches with the lack of rigour in the prioritization of necessities, creating a one-size-fits-all answer, without a how or a when. The close to intact potential of a plural and timely dimensional approach toward climate migration is the foundation for the suggested proposal in this dissertation: a tri-dimensional answer considering what has been possible (soft law mechanisms), what is necessary, (regional agreements), and what would be desirable (multilateral agreement). Through this three-step cadence, it is argued that the international community can provide feasible and appropriate protection for the rights of climate migrants.

Keywords: climate change, climate migration, legal gap, International Law, multi-track approach

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Introduction

Differently paced consequences of climate change, between the slow rise of temperature and sea level and the rapid rhythm of extreme patterns and phenomena, have resulted in severe territorial effects where human existence is no longer habitable or safe. These palpable inflictions in human life and living conditions have led to the emergence of a new group of vulnerable people: people displaced due to climate change effects. Data on human movements induced by climate change has demonstrated that millions of people have left their homes and nations voluntarily or by force. The underwhelming global accomplishments in reversing climate change have created a narrow pathway. Analysts point to an upscale within billions that climate change consequences in the future will displace. This written piece will focus on people who move due to climate change effects.

Against this background, International Law does not have a binding legal instrument or international agreement that substantively protects people displaced by climate change.¹ This legal void has impacted the lives of these exposed people, from human rights violations, rejection of refugee applications, and unorganized internal displacement to the potential construction of stateless individuals. There is an urgent need to fill this critical blank in International Law. The problem researched in this thesis is the lack of international protection regarding climate-induced movements and the rights of the people involved in these trajectories.

To fill the international protection gap concerning climate migration, this dissertation focuses on two main research questions: 1) *What could be the most adequate legal nomenclature to demonstrate the complex human movements caused by climate change?* and 2) *What could be the most effective solution to fill the gap in International Law regarding “climate change mobility” which offers better protection for climate migrants?*

¹ Indrajit Bose and Harjeet Singh, “Roadmap to a Framework for the Protection of Climate Migrants-Discussion Paper”, *Act!onAid*, (2021): 2.

In particular, the research assesses two main barriers to the international development of a mechanism to regulate climate migration: the nomenclature dissent and the literature proposals. The proposed solution conducts a different path because the research follows a holistic approach, where the legal nomenclature applied is carefully based on climate change and human mobility data so that the proposed legal concept mirrors the entire dimension of the climate change-induced mobility phenomenon. In addition, the thesis takes on a transversal walk through the proposed mechanisms in the literature, critically analyzing them without pushing them aside, absorbing the different angles and advantages that will eventually serve my end proposal. In this manner, the current thesis aims to provide an innovative response to climate migration that goes beyond the current state of the art.

This written piece is divided into four chapters that will help to answer the research questions. The first chapter narrates how human action has become the primordial cause of the alterations in climate on our planet, instituting a new period in humankind, the Anthropocene. After that, the chapter describes how climate change effects have led to a new tendency in human mobility, confirmed by numerous scientific evidence. Entering further detailed data on this phenomenon, the thesis aims to characterize the climate-induced movements to describe its present patterns and future tendencies. After understanding the description of this type of human movement, this piece investigates how climate change is perceived internationally. Then, the dissertation moves on to the current international protection under international law, focusing on four main issues identified as legal risks: the permanency in a third country, the uncontrolled internal movements, the violation of human rights, and the risk of the disappearance of territories generating stateless individuals. For this purpose, the thesis examines different provisions of international human rights law, international refugee law, and international standards for stateless people. This first chapter is completed with a scrutiny of the global institutional efforts made to resolve the gap in protecting people displaced by climate change over the last twenty years. The second chapter explains the importance of the nomenclature dissent present in the literature, which has been an essential pushback in protecting people displaced by climate change. In this regard, the thesis tackles the most critical concepts and notions that

have been applied to address the question of people moving due to climate change: refugees, migrants, and displaced people, in order to discuss what the most adequate concept is. This chapter concludes by arguing that the concept “climate migrant” should be considered the most appropriate term. Third chapter describes and critically analyzes the most important legal proposals to address climate migration: a) creating a multilateral agreement; b) signing regional accords, and c) developing soft law mechanisms. Finally, last chapter present the main proposal for protecting the rights of climate migrants, that is, a multi-track approach that comprehends the different elements and times to appraise what has been possible - soft law instruments-, what is necessary –focus on internal migration and potential stateless people through regional free movement agreements-, and what would be desirable- the implementation of a multilateral agreement to protect all climate migrants.

The primordial objective of this research piece is to develop a holistic and comprehensive approach that can provide an attainable proposal for the international community to agree on the nomenclature, state responsibilities, institutional management, and funding distribution toward the protection of the rights of climate migrants. Moreover, the thesis intends to highlight other ideas such as the emergence of the phenomenon, the intrinsic failure of International Law in protecting climate migrants, and the two gaps in the literature that complicated a solution to this topic: the nomenclature disagreement and the one-size-fits-all proposals. My ultimate goal is for humanity to realize the dimensional scope of climate change effects and help, through the explanation of the “human face of climate change”, to take climate action.

Several academic methodologies were applied in this written piece. Throughout the text, the primordial methodology utilized was a literature review of physical and online academic journals and books, absorbing opposing arguments and doctrines to provide critical analysis. Additionally, this thesis uses quantitative data research of present and future numbers on climate change and its related impact on human mobility to transmit the urgent need to fill the climate migration gap in international law. This scientific data was mainly found in reports of the United Nations, the Intergovernmental Panel on Climate Change, and the Internal Displacement Center. As a demonstrative strategy, this body of work also appraises different domestic and international jurisprudence,

highlighting the severe consequences of the lack of legal protection climate migrants have. With special relevance, it is analyzed the *Teitiota v. New Zealand* case, a pioneer case in the topic of climate migration. In addition, this work conducts a historical approach to the global governance of climate migration in the last 20 years. Moreover, this dissertation engages in a comparative analysis of different international and regional proposals, but also important instruments of soft and hard law nature, such as the Refugee Convention, the Declaration of Human Rights, the Guiding Principles on Internal Displacement, and Kampala Convention or the Cartagena Convention.

Chapter I. The Human Face of Climate Change and its Protection in International Law

The Industrial Revolution profoundly changed the relationship that allied humans and the environment. Nature became the source of industrialized exploitation to sustain human life. This new way of engagement with natural resources has slowly threatened human lives and future generations up until today.² The disruption between man and nature has modified planet Earth. Science has catalogued this transformation as a new geological era, the Anthropocene. While the Holocene, our preceding ecological period in history, was characterized by environmental stability, the Anthropocene reflects the impact of anthropical actions, where the human footprint is the primordial cause of changes in the planet.³

Within the panoply of consequences that arise from human action, climate change is decisively the one that constitutes the biggest threat to the future of humanity. Long-term alterations in temperature and weather patterns have shifted since the beginning of time, altered by natural causes like the solar cycle. However, humans have been the leading factor for climate change since the XVIII century.⁴ Our species has engaged in activities correlated with high carbon dioxide and methane emissions, known as greenhouse gases (GHGs). On top of that, human actions have annihilated most of the reestablishing natural forces, absorbers of these gases, and producers of oxygen, such as planetary flora. Both behaviours combined have eroded the ozone layer around the Earth. This “shield” was and is the protector of our globe against the rays that emanate from the Sun and is an essential mechanism that has balanced the temperature of our planet.

² Jodival Costa et al., “Ecosystem Services and Climate Change Policies in the Amazon”, *Modern Environmental Science and Engineering* 5, No. 2 (2019): 144-154.

³ Eduardo Viola and Larissa Basso. “O Sistema Internacional No Antropoceno.” *Revista Brasileira De Ciências Sociais* 31, No. 92 (2016): 1-19.

⁴ IPCC Working Group I report, *Climate Change 2021: the Physical Science Basis*, (2021).

Today, the temperature of the Earth is 1.1°C warmer than at the beginning of the Industrial era⁵, and the last decade (2010-2020) was the warmest ever recorded.⁶ The number of natural events has duplicated, and 90% of the disasters were linked to climate change.⁷ The Emergency Events Database, calculated that between 2000 and 2019, there were 7,348 climate-related disasters, compared to 4,212 recorded between 1980 and 1999.⁸ These numbers have reverberated into a multitude of effects. The increase and intensity of the consequences of climate change have created severe problems, like water scarcity, the decline of biodiversity, and extreme weather phenomena.⁹ What at first glimpse seemed to integrate the environmental concern expanded its frontiers into other fields.¹⁰

1. Navigating the Climate Crisis: Understanding Climate Change Mobility

The connection between climate and humans is vital and inalienable, founded in “the fine balance of human geography and human existence”¹¹. Climate change is a transcendent phenomenon in the scope of its consequences and can play an imperative role in human movements. It has been 20 years since the Intergovernmental Panel on Climate Change (IPCC) alerted that climate change could impact “human migration”¹². Today, the interconnection between climate change and human mobility is transposing from paper predictions to reality. In 2014, the IPCC conducted a report that proved a direct connection between climate change repercussions and the increment of

⁵ *Idem*.

⁶ United Kingdom Met Office, *World Meteorological Organization Global Annual to Decadal Climate Update*, (World Meteorological Organization, 2020).

⁷ Asian Development Bank, *Global Increase in Climate-Related Disasters*, (Asian Development Bank, 2015): 3.

⁸ Centre for Research on the Epidemiology of Disasters, World Health Organization, *Human Cost of disasters. An Overview of the Last 20 years 2000-2019*, (EM-DAT, 2020): 6-7.

⁹ IPCC Working Group II, *Climate Change 2022: Impacts, Adaptation and Vulnerability*, (IPCC, 2022).

¹⁰ Lavanya Rajamani and Jacqueline Peel. *The Oxford Handbook of International Environmental Law*. (Oxford University Press, 2021).

¹¹ Stellina Jolly and Nafees Ahmad, “Climate Refugees under International Climate Law and International Refugee Law: Towards Addressing the Protection Gaps and Exploring the Legal Alternatives for Criminal Justice”, *ISIL Year Book of International Humanitarian and Refugee Law* 14, (2015): 218.

¹² IPCC Working Group II, *Climate Change, The IPCC Impacts Assessment, Report prepared for IPCC by Working Group II*, Vol. 3 No. 20, (IPCC, 1990): 2-22.

human displacement.¹³ Climate change can unfold various territorial impacts: increase in soil salinity levels, coastal and low-land zone floods, and impediments to land access.¹⁴ The report projected that in upcoming years human movements would observe an escalation of the numbers due to the enumerated consequences. This prognosis was described as mid-scientific evidence with a high degree of consensus.¹⁵

Currently, palpable situations of human mobility in the context of climate change are already occurring. The Pacific islands of Tuvalu, Kiribati, and Vanuatu are on the verge of complete submersion, which has led numerous people to move to nearby islands and countries such as the islands of Fiji and New Zealand.¹⁶ Numerous studies tackle the issue of climate change and human mobility. Estimates and statistics reveal frightening and astonishing consistency in the abnormality and impact of this phenomenon, surpassing previous refugee crises in the number of people affected.¹⁷ It is estimated that since the year 2008, climate change consequences have forcibly displaced 21,5 million people every year, which translates to 41 individuals displaced in each minute that goes by.¹⁸

Climate change-induced displacement is an extraordinarily complex phenomenon. In this regard, the 2017 IPCC report contemplated one of the first thorough displays of diverse causes and scenes for climate change displacement. The assessment report listed, among others, the loss of housing, predominantly caused by flooding or mountain mudslides; the loss of essential resources, such as water, energy, food, or even employment troubled by climate change; and the loss of social and cultural networks, like the destruction of cultural infrastructures, and of community systems of

¹³ IPCC, Contribution of Working Groups I, II and III, *Climate Change 2014: Synthesis Report, to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, (IPCC, 2014): 151.

¹⁴ Vilkrum Kolmannskog. "Climates of displacement", *Nordic Journal of Human Rights* 26, No. 4 (2008): 302–320.

¹⁵ Rajendra Pachauri and Leo Meyer, *Climate change 2014: synthesis report*, (IPCC, 2015).

¹⁶ Tiffany Duong, "When Islands Drown: 'The Plight of 'Climate Change Refugees' and Recourse to International Human Rights Law", *University of Pennsylvania Journal of International Law* 31, No. 4 (2010): 1266-1240.

¹⁷ Frank Biermann, and Ingrid Boas, "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *GLOBAL ENVIRONMENTAL POLITICS*, No. 10 (2010): 51.

¹⁸ Alexandra Bilak, et alt., *2016 Global Report on Internal Displacement*, (Global Internal Displacement Database, 2016).

connections.¹⁹ This range of effects indicates that climate change movements are intertwined in a composite complexity. Using a practical example to provide some context. Michael is a farmer, and when faced with a severe drought that annihilated his sustain, he decided to move. It is challenging to understand whether the decision was made because of climate change, socioeconomic motives, or a combination of both. Human mobility is an adaptation technique that involves multiple factors. Although there are individual factors, such as economic, social, or environmental, that weigh in the decision to migrate, most movement flows are of mixed nature.²⁰

Bearing in mind the scientific evidence of present reality and future graphics, there is room for accurately exposing some facts that define and characterize climate-induced mobility. The first convoluted aspect of climate displacement is its vast scope. The International Organization for Migration (IOM) separates human mobility into two categories based on movement extent. Internal displacement occurs between regions of the same country; people “move but remain inside their country of origin”²¹. On the contrary, external displacement involves a move “from a country of origin or usual residency (...) to another country”²². This modality requires the crossing of international borders. Climate movements encompass both modalities. Nevertheless, it appears to be more of an internal phenomenon for the moment. During 2020, the environmental phenomena in East Asia and the Pacific zone generated 12,1 internally displaced people. Around 94% of this induced displacement was attributed to extreme natural events catapulted by climate abnormalities.²³

In the second place, territorial transformations originated by climate change, like soil salinization, groundwater, and submersion of coastal areas, will shape human movement into a forced and permanent displacement when livelihood and life are on the verge of destruction, choice becomes an obligation. In such cases, there will not be another option

¹⁹ William McGregor, et alt., *FAR Climate Change: Impacts Assessment of Climate Change*, Chapter 5, (IPCC, 2010).

²⁰ Anthony Oliver-Smith, “Nature, Society, and Population Displacement. Toward an Understanding of Environmental Migration and Social Vulnerability”, *Publication Series of UNU-EHS*, No. 8 (2009): 10.

²¹ IOM, *Glossary on Migration, International Migration Law*, n°22: 40.

²² *Idem*.

²³ Christelle Cazabat and Alesia O'Connor, *Internal Displacement in a Changing Climate, Internal Displacement Index Report 2021*, (IDMC, 2021).

than leaving. In other scenarios, climate displacement can be attributed to declining living conditions progressively inflicting life and economic opportunities. This climate movement can be an anticipated mechanism, voluntary and often permanent movement. The deterioration of the essential basis for an adequate way of life pushes people to move due to a projection of eventual uninhabitability.

Focusing on the temporal scope, three different types of individuals can be categorized: people temporarily displaced, that later can come back to their homes once the environmental hazard has passed, others who lost their livelihood or home and are forced to relocate permanently, and some that voluntarily leave their homes to search for better living conditions. The referred situations make climate displacement of a temporary or permanent character. Fernandes asserts that people displaced by climate change usually move from extreme weather phenomena following a circular movement. Leaving when the calamity arrives and returning once the conditions for doing so are reestablished.²⁴

Within all these traces and patterns, there is a microcosmos of territory and its subjacent people, which are distinctly impacted by climate change consequences. Although climate change is a transversal problem, it does not affect the entirety of the globe the same way. As mentioned, geographical, economic, social, and political factors make countries more susceptible to climate change inflictions. A disregarded but essential vision that needs to be integrated into the policy discussion is the socioeconomic background of nations and victims. Developing nations are the ones on the verge of being affected by the hazards caused by climate change, and impoverished individuals will likely be once again the ones severely targeted.²⁵ The World Risk Report has a specific element of study on environmental disaster risk, which ranks the list of countries with greater risk assessed on exposure, susceptibility, coping, adaptation, and vulnerability.²⁶ At the 1992 United Nations (UN) Conference about Environment and Development, the classification of Small Islands Developing States (SIDS) was born. This term represents countries of

²⁴ Elizabeth Fernandes. “Movimentos Desiguais: Reflexões Sobre a Proteção Internacional Das Pessoas Forçadas a Se Deslocar Por Causas Ambientais Agravadas Pelas Mudanças Climáticas”, (Dissertation, Univerisity of Law of São Paulo, 2013): 52.

²⁵ US Global Leadership Coalition, *Climate Change and the Developing World: A Disproportionate Impact*, (2021).

²⁶ E.g., Hans-Joachim Heintze, et alt., *WorldRiskReport 2018*, (Bündnis Entwicklung Hilft, 2018).

small dimensions with specific traits that share challenges regarding development, resources, geographic disposition, external dependence, and risk of natural disaster infliction. These countries are distributed through six regions: the Caribe, the Pacific, Africa, the Indic Ocean, the Mediterranean, and the Meridional Sea of China.²⁷ Even though GHG emissions from SIDS equal less than 1% of the global number, these are and will be the first ones facing the most severe impacts. These states are especially vulnerable to environmental disasters such as droughts, thunderstorms, floods, and salinization.²⁸ Small islands are mostly zones of low altitude. In the Tropical Region of the Occidental Pacific, it has been predicted that the level of the sea will rise 12mm each year, and, for example, the highest terrain in Tuvalu is only 5 meters high.²⁹

2. An Examination of the Deficiencies in International Legal Safeguards for Human Mobility in the Context of Climate Change

There is no specific international binding agreement on protecting the rights of persons or groups displaced by climate change. The following point descends to four fundamental legal challenges arising out of climate mobility and the kind of protection international law gives to those matters. This square starts with the external movements created by climate change effects and how the international refugee law regime regulates these movements. Next, by analyzing the UN Guiding Principles on Internal Displacement, this research discusses the regulation given by international law to domestic trajectories. After that, this section assesses the imminent threats propounded by the international regime to the human rights of climate migrants. Finally, this piece explores the critical situation of SIDS, which are under the fear that their territory nationality will disappear. This dissertation will reveal if international law contemplates protecting citizens from a nation that has disappeared.

To practically comprehend these global law gaps and their implications, this thesis will describe the paradigmatic case law of Teitiota and his family, one of the first law cases to

²⁷ Department of Economic and Social Affairs Sustainable Development, *List of SIDS*.

²⁸ Isabel Abreu, “Desenvolvimento sustentável em pequenas ilhas”, *Portal naturlink*, (2007).

²⁹ *Ibidem*, *supra* note 13.

succumb to international law for protection because of climate change effects. This analysis is essential to discover if or what protection is needed in international law for people who crosswise move due to climate change.

2.1. International Refugee Law

The international refugee law regime draws the rights, obligations, and responsibilities that nations have to asylum-seekers and refugees and allows chances for cooperation and burden-sharing on the management of international refugee protection.³⁰ The 1951 Refugee Convention (RC) is the primordial international mechanism of this sub-field of international law. The multilateral agreement includes a list of fundamental rights and principles like the principle of non-refoulement, the principle of non-expulsion, and the principle of non-penalization due to illegal entrance. The RC defines a *refugee* as someone “unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”³¹ Refugees, under the principle of non-refoulement, have the right not to be transferred or removed by state nations from a place of safety inside their jurisdiction or one under their control to a state offering risk of harm.³²

Nonetheless, the international refugee law regime does not grant any legal safeguard to *climate refugees*. Article 1 from the RC does not inscribe environmental disruptions in the concept of refugee and writes that a refugee should move owing to a well-founded fear of being persecuted.³³ Williams and Berchin advocate that climate change does not constitute a situation of persecution, because there is no persecutor.³⁴ Equivalently, Terada links the persecution aspect of the Convention to an inability to seek protection in the home country. In the expert opinion, climate-displaced individuals can solicit that

³⁰ Alexander Betts, “The Refugee Regime Complex”, *Refugee Survey Quarterly* 1, No. 29 (2010): 12–37.

³¹ Refugee Convention, UN General Assembly resolution 429(V), (1951): Article 1 (2).

³² *Ibidem*, article 33.

³³ *Idem*, *supra* note 31.

³⁴ Issa Berchin et al., “Climate Change And Forced Migrations: An Effort Towards Recognizing Climate Refugees”, *Geoforum* 84 (2017): 147-150.

help.³⁵ There is a restitutive process implied in the RC. Once the persecuting element disappears, it is implied that the individual should return home.³⁶ Finally, the RC demands the existence of a threat directed at a specific group, and climate change, being a natural threat, does not threaten particular groups, and for that reason does not match this legal requirement.

Some experts trace back to the genesis of the RC to argue that the document was purposely constructed as it is, and that, as it is, excludes the option of *climate refugees*. Bhuyan et al., stated that the refugee status resulted from a Eurocentric mindset.³⁷ The 1951 RC was created to address the refugee crisis that followed the II World War. This construction was evident in the wording of Article 1 A (2) of the RC, where temporal and geographical requisites were established. Refugee protection only applied to individuals based on the well-founded fear of being persecuted based on race, religion, nationality, social and political group, which occurred in European territory before the 1st of January 1951. Only with the 1967 Additional Protocol did these requisites disappear, and the refugee status was expanded. Hathway and Foster also argue that the refugee definition of the RC was part of a Eurocentric mindset. In this regard, they consider that Western states drafted Article 1 to prioritize the protection of persons whose displacement had been driven by pro-Western political values.³⁸ This approach justifies the limitations in the fear of persecution to civil and political status only and explains that the entire regime of the Convention was erected in a way that dispensed the distribution of post-war refugees from Europe.

³⁵ Jessica Terada, “Deslocados Climáticos e a Ausência de um Instrumento Jurídico de Proteção- Análise do Caso Prático dos Pequenos Estados Insulares.” (Dissertation, Lisbon University of Law, 2019): 33.

³⁶ *Ibidem*, *supra* note 31, Article 1 (6).

³⁷ Rupaleem Bhuyan, et al, “Regulating Spousal Migration through Canada's Multiple Border Strategy: The Gendered and Racialized Effects of Structurally Embedded”, *Borders. Law & Policy* 4, No. 40 (2018): 346-370.

³⁸ James Hathway, and Michelle Foster, *The Law of Refugee Status*, (Cambridge University Press, 2014).

2.2. International Human Rights Law

International Human Rights Law is a rich and complex field. Human rights are inseparable and interconnected, contemplated on several foundational pillars of international human rights law: treaties, covenants, and declarations. There are three main legal instruments in this field: the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic and Social Cultural Rights (ICESCR).

Displacement caused by climate change undermines the satisfaction of human rights such as rights to life, health, security, housing, food, water, and education, as well as culture, the right to self-determination, and the rights of indigenous peoples.³⁹ For example, the right to life is restrictively comprehended by the UN Human Rights Committee (UNHRC), meaning that states have the responsibility to act on protecting the right to life. The failure to do so allows victims to seek compensation.⁴⁰ Therefore, in theory, victims of lack of state protection on their right to life due to climate change can seek remedies. Another example is the human right to health and welfare. According to Articles 25 of the UDHR and 12 (1) of the ICESCR, everyone holds the right to a degree of living sufficient for the health and welfare of their families. Climate change can aggravate respiratory and vector-borne health issues. The World Health Organization has estimated that since the 1970s, 150,000 people have lost their lives due to climate change-related repercussions.⁴¹ As a third and final example, the right to food, contemplated in Articles 11 (1) and (2) of the ICESCR is also endangered by climate change reverberations. The right to food consists of consumption, availability, accessibility, and controlled supply. Extreme weather events turn the disposition of arable land, and changes in water supplies can lower food availability and output.

³⁹ Tessa Khan, *Human Rights Council Working Group on the Right to Development, Review of progress in the implementation of the right to development, Promoting rights-based climate finance for people and planet*, 19 session, (2018): Item 4 (c) of the provisional agenda.

⁴⁰ John Doussa, et al., “Human rights and climate change”, General comment the Right to Life, *Australian International Law Journal*, No. 6 (2007).

⁴¹ Nicholas Stern, “The Economics of Climate Change”. *American Economic Review*, Vol. 98, No.2, (2008): 1–37.

This imminent threat is real. In 2020, five North American indigenous tribes launched a complaint before UN Special Rapporteurs under the human rights of internally displaced people and the rights of indigenous peoples, alleging that the Louisiana state, in the USA, had violated their human rights due to inaction toward climate migration, leading to the infliction of harm on life, livelihood, health, heritage, and ancestral homeland.⁴²

International human rights law has been a progressive field in the topic of climate change and climate migration. There have been produced soft law regiments, such as the 1972 Stockholm Declaration⁴³, the Rio Declaration⁴⁴ and the 1998 Aarhus Convention⁴⁵, which acknowledged human mobility caused by natural events was a human rights issue. Moreover, the principle of non-refoulement, directly written in the RC, has catapulted from refugee law, to grant more comprehensive protection in international human rights law, applicable to all people who move, regardless of their migration status or their motives.⁴⁶ This upholds the sub-discipline regime and has resulted in a direct binding of states, that do not have a personal scoping restriction such as the one of the RC.⁴⁷ In addition, in 2019, five international human rights committee treaties from the Committee on the Elimination of Discrimination Against Women, Committee on Economic, Social and Cultural Rights, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Committee on the Rights of the Child, and Committee on the Rights of Persons with Disabilities, published a joint statement hinting states that their failure to implement policies to prevent human rights violations caused by climate change could be a violation of state obligations toward human rights, according to the

⁴² Complaint Alaska Institute for Justice to Cecilia Jimenez-Damary et al. (UNHRC Special Rapporteurs), Rights of Indigenous People in Addressing Climate-Forced Displacement, (January 15, 2020).

⁴³ Declaration of the UN Stockholm Conference on the Human Environment (“Stockholm Declaration”), UN Conference A/Conf.48/14/Rev 1, (1972).

⁴⁴ Declaration of the UN Rio Conference on Environment and Development (“Rio Declaration”), UN Conference Doc. A/Conf.151/5Rev 1, (1992).

⁴⁵ Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters” (Aarhus Convention), UN Economic Commission for Europe, 2161 UNTS 447, (1998).

⁴⁶ UN, Officer of the Human Rights Committee, “The principle of non-refoulement under international human rights law”.

⁴⁷ Lutz Oette, “Bridging the Enforcement Gap: Compliance of States Parties with Decisions of Human Rights Treaty Bodies”, *Interights*, No 16 (2010): 51.

international regime.⁴⁸ Another essential step was the 2022 recognition of the right to a clean, healthy, and sustainable environment as a fundamental right and even the creation of a new Special Rapporteur on the Protection of Human Rights in the Context of Climate Change.⁴⁹

The literature has critically analyzed the practical application of international human rights law within the climate-induced-mobility context.⁵⁰ The Committee to each of the mentioned five treaties has the responsibility to monitor party compliance through reporting and receiving inter-state and individual complaints regarding human rights violations, and perform state recommendations of non-binding character with an influential role in the international context.⁵¹ Nonetheless, there are operational challenges in international human rights law, that limit the reach of the mechanisms to climate-exposed nations, such as SIDS, which inevitably lead to a restriction to treaty body mechanisms to the most affected people by climate change.⁵² A different part of the challenge lies within the functional aspect of the regime. The periodic reporting obligations create a bureaucratic challenge with overlapping informative duties. Moreover, the inquiry process is scope-limited, and to spark this procedure, it is necessary to demonstrate grave or systematic violations of human rights by the mentioned state party.⁵³ In addition, the confidential emphasis on inquiry procedures, jointly with the restricted grounds for procedural initiation, brings additional climate justice

⁴⁸ CEDAWCom, CESCRCom, CRMWCom, CRCCom and CRPDCom, “Joint Statement on “Human Rights and Climate Change”, (16 September 2019).

⁴⁹ Global Compact for Safe, Orderly and Regular Migration, United Nations General Assembly Resolution 73/195, annex, T21 (2018).

⁵⁰ Sebastien Duyck, Sebastien Jodoin, and Alyssa Johl, “Routledge Handbook of Human Rights and Climate Governance”, (Routledge, 2018); John Knox, “Climate Change and Human Rights Law”, *Virginia Journal of International Law*, No. 50 (2009): 163–218; Siobhan McInerney-Lankford, *Human Rights and Climate Change: Reflections on International Legal Issues and Potential Policy Relevance* (Cambridge University Press, 2013): 195–241; Keina Yoshida and Joana Setzer, “The Trends and Challenges of Climate Change Litigation and Human Rights”, *European Human Rights Law Review*, No 2. (2020): 140.

⁵¹ *Ibidem*, *infra* note 54.

⁵² Elizabeth Ferris, et alt., *On the Front Line of Climate Change and Displacement: Learning with and from Pacific Island Countries*, (The Brookings Institution: London School of Economics Project on Internal Displacement, 2011).

⁵³ UN Office of the High Commissioner for Human Rights, *The United Nations Human Rights Treaty System*, Vol. 1, No. 30, (2012).

preoccupations regarding transparency and access.⁵⁴ Another point is the historical reluctance of state parties to use inter-state complaints, having been untouched until 2018.⁵⁵ Finally, the procedural aspects are presented by the requirement for an individual victim and the exhaustion of all domestic legal means. In the climate change dilemma, a global phenomenon that collectively impacts all humanity, the demand that an individual demonstration of a personal and direct infliction by the action or inaction of the state-nation is a tremendous utopia.⁵⁶ This would implicate the demonstration of a statal policy or action failure, either to implement mitigation measures to restrict greenhouse gas emissions in their jurisdiction or protective adaptation measures toward climate change effects that have exposed them to a materialized or imminent harm of specific human rights.⁵⁷ Additionally, the requirement of prior utilization of domestic remedies is not accompanied by the verification of adequate human dignity protection in the country where the complaint is performed.⁵⁸

2.3. Guiding Principles on Internal Displacement

As previously mentioned, most affected communities and individuals will stay inside their own country.⁵⁹ Internally displaced people (IDPs) are victims of multi-human rights violations, from the right to health and housing, personal safety, justice, and education. However, no binding convention is dedicated to protecting IDP within international law.

⁵⁴ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, *UN Treaty Series*, vol. 2131, Article 8(1), (1999): 83. Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, UN General Assembly Resolution 66/138, (2011): Article 13(1). Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Optional Protocol, UN General Assembly Resolution 54/4 (1999) Article 8(5).

⁵⁵ Scott Leckie, “The Inter-State Complaint Procedure in International Human Rights Law: Hopeful Prospects or Wishful Thinking?”, *Human Rights Quarterly*, No. 10 (1988): 249.

⁵⁶ UN Office of the High Commissioner for Human Rights, *Complaints Procedure*, Fact Sheet No.7/Rev.1.

⁵⁷ *Ibidem, supra*, at 16.

⁵⁸ Optional Protocol to the International Covenant on Civil and Political Rights, A/RES/2200, Article 2, (1966); Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, UN General Assembly Resolution 63/117 (2008): Article 3. Theodor Meron, “State Responsibility for Violations of Human Rights”, *Proceedings of the Annual Meeting, American Society of International Law*, No.83 (1989): 377.

⁵⁹ Tess Burton and David Hodgkinson, *Towards a Convention for Persons Displaced by Climate Change: The Hodgkinson Group – Climate Change and Aviation Advisors (Publications)*, (2009): 9.

There are only scattered provisions in international humanitarian law, only applicable in situations of armed conflict, and international criminal law on the treatment of IDPs. This type of mobility is restricted to domestic regulations, meaning IDPs “are the responsibility of their state.”⁶⁰ Governments are faced with complicated decisions regarding the protection and assistance of IDP by climate change amidst financial, operational, and political priorities and dogmas. Leaving it up to the domestic policies can be dangerous. For example, in India, there are no national provisions directly regarding internal displacement.⁶¹ Additionally, climate change effects are ruthless in nations where people already have their fundamental rights compromised.⁶² In a vulnerable country such as Bangladesh, the Internal Displacement Monitoring Centre (IDMC) reveals that internal displacement has led to a harshening of the normal livelihood increased food insecurity, and heightened risk of health problems.⁶³ A country where there is fragile institutional monitoring, short inclusion of stakeholders, and a lack of incentives and funding has led to a stagnation of existing and new policies.⁶⁴

Against this backdrop, IDPs are contemplated under international human rights law. Out of the realization of many grey areas of protection of IDPs in international law, the UN Refugee Agency adopted a soft law instrument, the Guiding Principles on Internal Displacement (GPID).⁶⁵ The agency defined IDPs as individuals or groups of people who move within a country as a result “to avoid the effects of armed conflict, situations of generalized violence, violations of human rights, and natural or human-induced disasters, and who have not crossed an internally recognized state border”⁶⁶. Succinctly, the GPIDs concede guidance for situations of internal displacement, synthesizing various applicable

⁶⁰ Dina Ionesco, “Let’s Talk About Climate Migrants, Not Climate Refugees”, *Un.org*, (June 6, 2019).

⁶¹ Giwoong Son, et alt., “A lack of legal frameworks for internally displaced persons impacted by climate change and natural disasters: Analysis of regulatory challenges in Bangladesh, India and the Pacific Islands”, *Global Campus Human Rights Journal* 6, No.1 (2022): 78.

⁶² Zoi Aliozi, “Climate justice: Human rights and animal rights.”, *Resolution Journal* 1, (2020).

⁶³ *Idem*, note 24.

⁶⁴ Abdul Khan, “Social and legal barriers to improving human rights of climate change displaced people in Bangladesh”, *Journal of Interrupted Studies*, No.2 (2019): 103–117

⁶⁵ Rafael Leal-Arcas, “Climate Migrants: Legal Options”. *Procedia – Social and Behavioral Sciences* 54, (2012): 91.

⁶⁶ Guiding Principles on Internal Displacement, UN Commission on Human Rights (UNHCR), UN Doc, (1998).

norms in international human rights and humanitarian law into crucial principles.⁶⁷ The regime expounds specific duties of states to protect IDPs in the differing displacement stages, pre-displacement and displacement, and fixating secure steps for return, resettlement, and integration.⁶⁸

Nevertheless, these principles are not a declaration of rights nor a binding instrument. Moreover, the GPID mirror contemplated rights applied to IDPs, not because they regard their conditions and circumstances, but because they are universal.⁶⁹ There is also questions whether these principles reach climate-induced internal displacement. Kälin believes that the GPID apply to people “whose place of origin has become uninhabitable as a consequence of a slow-onset disaster”⁷⁰. Utterly, in 2007, the UN Human Rights Council requested the Representative of the Secretary-General on the human rights of internally displaced persons to enhance the protection of people displaced due to environmental events.⁷¹ The UN later recognized those who were displaced in this situation to be IDPs.⁷² Even so, not all agree. Hear advised a restriction of the concept only to conflict-induced problems.⁷³ This debate has been revealed in practical situations. The USA, refused to apply the GPIDs to people uprooted by Hurricane Katrina, clarifying that they did not view the document “as an expression of governing international law.”⁷⁴ Alike, in 2005, the Pakistani government refused to apply the GPID following an earthquake, stating that the principles were intended to protect instances of conflict and persecution.⁷⁵ Furthermore, the GPID do not provide multilayered protection against

⁶⁷ Walter Kälin, “Guiding Principles on Internal Displacement: Annotations”, *The American Society of International Law Washington*, No. 38 2nd Edition (2008).

⁶⁸ *Idem*, *supra* footnote 66.

⁶⁹ Noam Schimmel, “TRAPPED BY SOVEREIGNTY: The Fate of Internally Displaced Persons and Their Lack of Equal Human Rights Protection under International Law”, *World Affairs*, (2022): 504.

⁷⁰ Walter Kälin. *Conceptualising Climate-Induced Displacement*, in *Climate Change and Displacement: Multidisciplinary Perspectives*, (Hart Publishing, 2010): 85-86.

⁷¹ Human Rights Council Resolution. 6/32, 14, December 2007: 7(g).

⁷² UN General Assembly Resolution. A/C.3/64/L.34/Rev.1, (2009).

⁷³ Nicholas Hear and Stephen Castles, “Developing DFID’s Policy Approach to Refugees and Internally Displaced Persons, Volume I: Consultancy Report and Policy Recommendation”, *Refugee Studies Centre*, (2005): 12.

⁷⁴ USAID, *Assistance to Internally Displaced Persons Policy*, PD-ACA-558, (Agency for International Development), 2004, at 6.

⁷⁵ Andrew Wilder, “Perceptions of the Pakistan Earthquake Response”, *Humanitarian Agenda 2015 Pakistan Country Study*, (2008): 40-41.

vulnerability and discrimination, such as children, the elderly, people with disability, or indigenous people. The GPID also lacks support for states conditioned by the short-acting capacity, and the principles have a weak international response from humanitarian agencies, not having joint responsibilities for coordinated action.

This lack of international protection has severely affected thousands of lives. In the USA, the Federal Emergency Management Agency conducted rescue and evacuation plans on the Gulf Coast but did not contemplate transportation for persons who did not have a car or for people hospitalized or incarcerated.⁷⁶ This situation was underlined by the UN Human Rights Committee (UNHRC) which demanded the consideration of these people on reconstruction plans.⁷⁷

In 2006, McNamara, former director of the internal displacement division of the UN, stressed why IDPs are often neglected and marginalized in the structural unfairness revealed in international law. Partially because IDPs are voiceless and attract poor press attention.⁷⁸ IDPs have a peculiar situation; the lack of concrete, targeted, and extensive ratification has resulted in inferior protection of their human rights.⁷⁹ Schimmel, concludes, IDPs “are abandoned by international law (...) to the whims of their abuser nation-states.”⁸⁰

2.4 International Standards Related to Stateless Persons

As exposed in the description of climate-induced movements, an imminent event can aggravate the humanitarian situation caused by climate change. SIDS are usually located in low-land islands, where there is a high chance of flooding, or worse, complete submersion over time due to sea level rise.

⁷⁶ Cynthia McKinney, *Supplementary Report to the Findings of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina*, (US House of Representatives, 2006).

⁷⁷ Human Rights Committee, Doc. CCPR/C/USA/CO/3/Rev.1, (2006): 26.

⁷⁸ Dennis McNamara, Press Conference on Nepal, United Nations Meetings Coverage and Press (United Nations, 22 april, 2005).

⁷⁹ Matthew Rosenberg, “Refugee Law and the Displacement Loophole.” *Hertfordshire Law Journal* 2, (2004): 19–25.

⁸⁰ *Ibidem* note 69, at 507.

International law principles that rule the extinction of states do not foresee a physical disappearance of states, they presuppose the continuity of established countries through existential criteria listed to recognize a state.⁸¹ The Montevideo Convention writes in Article 1 the requirements for states to be recognized as such within international law: a permanent population, established territory, government, and capacity to engage with other states.⁸² Without these elements, states are considered mischaracterized and therefore, declared extinct. Up until now, state extinction would only occur with total or partial annexation, fusion, or division.⁸³ The disappearance of a state consequently generates the disappearance of intrinsic citizenship as “no longer be a State of which a person could be a citizen”.⁸⁴

The status of statelessness describes a person without nationality and not a person without a state.⁸⁵ Nationality translates to the legal bond between an individual and a state, which concedes subjects a part of their identity and comes with a vast panoply of rights.⁸⁶ The possession of nationality is a crucial element for complete participation in society and a prerequisite for the fulfillment of human rights. As a result, the lack of nationality consequently impacts the enjoyment of these rights. This situation is a clear threat to Article XV of the UDHR, which states that “Everyone has the right to a nationality” and “No one shall be arbitrarily deprived of his nationality”.⁸⁷ Therefore, it is necessary to discover if submerged islands maintain legal recognition as a state and if their citizens can access protection in international law.

⁸¹ Jenny Stoutenburg, *When Do States Disappear?: Thresholds of Effective Statehood and the Continued Recognition of Deterritorialized Island States, Threatened Island Nations: Legal Implications of Rising Seas and A Changing Climate*, (Cambridge University Press, 2013): 57.

⁸² Montevideo Convention on Rights and Duties of States, (1993): Article 1.

⁸³ José Silva and Fernando Rei. *Tuvalu: Atlântida Contemporânea*, (Editora da Universidade Federal de Roraima, 2018): 388.

⁸⁴ Susin Park, "Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States," *UNHCR*, (2011): 4.

⁸⁵ Suraia Jebin, “The Status and Human Rights Protection of Stateless Rohingyas: an analytical study under international law”, *International Journal of Innovations in Engineering Research and Technology* 8, No. 5 (2021): 22.

⁸⁶ *Ibidem*, *infra* footnote 87 article 13 (1).

⁸⁷ Universal Declaration of Human Rights, UN General Assembly Resolution 217A (III) (1948): Article XV.

The 1954 Convention Relating to the Status of Stateless Persons offers a narrow perspective on stateless: “not considered as a national by any State under the operation of its law.”⁸⁸ The definition does not include *de facto statelessness*, individuals who have a nationality attributed to them but cannot perform the rights of a citizen. In practice, stateless individuals are left with almost non-existent legal protection.⁸⁹ Also, the convention provides an effort to return individuals to their country of origin; territorial disappearance is not contemplated.⁹⁰ In the UNHRC paper, *Climate Change and Statelessness: An Overview*, experts confirm that through the stands and spirit of international law, these people are stateless, but this is not contemplated in any international regime.⁹¹ Consequently, under the Convention, these vulnerable persons would have a parallel legal regime to foreigners, the right to own a home, to work, to just salary, liberty of movement, and access to justice.⁹²

Opinions are unanimous, the Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are minimal protections, and both have a modest number of ratifications.⁹³ Experts affirm that stateless people due to climate change have a “genuine normative gap in international law.”⁹⁴

3. The *Teitiota v. New Zealand* Case: An Analysis of Legal Precedents in Climate-Induced Mobility

The *Ioane Teitiota v. Chief Executive of the Ministry of Business Innovation and Employment*⁹⁵ case is a prominent example of the international law failure on human mobility caused by climate change. Ioane Teitiota is a citizen from Kiribati island who

⁸⁸ Convention Relating to the Status of Stateless Persons, UNHCR, (1954): Article 1.

⁸⁹ Harun Rashid, *Refugee law (with case-laws & materials)*. (Dhaka: Anupam Gyan Bhandar, 2000): 69.

⁹⁰ UN High Commissioner for Refugees, *Experts Meeting. The Concept of Stateless Person According to International Law – Conclusion* Resume, (2010).

⁹¹ United Nations High Commissioner for Refugees, *Cambio climático y apatridia: una visión general*. (2009).

⁹² *Ibidem*, *supra* footnote 88, Article 13, 16(3), 21, 26 and 27.

⁹³ Etienne Piguet, “Climatic Statelessness: Risk Assessment and Policy Options”, *Population and Development Review* 45, No. 4 (2019): 875.

⁹⁴ Louise Olsson, “Environmental Migrants in International Law, An assessment of protection gaps and solutions”, (Dissertation, Örebro University, 2015)

⁹⁵ *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment*, [2015] NZSC 107, New Zealand: Supreme Court, (20 July 2015).

fled his country with his family due to sea submersion caused by sea level rise. In 2013, the family registered an asylum application under Section 198 of the Immigration Act 2009 before the domestic court of New Zealand, the Immigration and Protection Tribunal (IPT). Accepting the application would allow him the right to remain in New Zealand as a refugee under the RC.

Two grounds were at the stem of the complaint of Teitiota, sustained by his testimony conjointly with an expert witness on climate change consequences. The first base was the environmental deterioration caused by saltwater contamination of water supplies restricting the access to potable water, and second, the scarcity of place to habit, which led to territorial disputes, threatening his right to life.⁹⁶ The IPT rejected the application, turning to the RC and its requirements to be considered *refugee*. The tribunal stated that the movement Teitiota and his family traced could not be considered forced; it was voluntary. Another justification was the inexistence of a well-founded fear of returning to their country and the lack of physical threat that constituted a fear for their lives. The court added that the threat must also be directed at a specific group, and climate change, being a natural threat, does not threaten particular groups. After rejection, Teitiota appealed to the New Zealand High Court, where the judge described his arguments to be “novel and optimistic (...) and unconvincing.”⁹⁷ Teitiota was deported back to his country.

In a last hope call, Teitiota lodged a claim with the UNHRC. The UNHRC interpreted the applicability of the non-refoulment principle on the case and admitted that the right to life also “includes the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death”⁹⁸, additionally, stated that sea level rise could turn Kiribati uninhabitable. Nevertheless, the UNHRC said that the 10-15-year timeframe for the sea level rise allowed Kiribati to intervene with the help of the international community. The organization added the

⁹⁶ Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment, [2015] NZSC 107, (New Zealand: Supreme Court, 20 July 2015).

⁹⁷ *Ibidem*, *infra* footnote 100.

⁹⁸ Optional Protocol to the International Covenant on Civil and Political Rights”, UN General Assembly Resolution 2200, (1966): paragraph 62.

principle of non-refoulement could not be triggered in this circumstance.⁹⁹ Therefore, that justified the conclusion of the High Court on the removal from Teitiota and his family to Kiribati did not violate their right to life under Article 6 of the UDHR.

Two main reasons were pointed out by the UNHCR for the failure of the appeal on human rights protection in this case.¹⁰⁰ The first was the lack of specific danger. Climate change has the potential to affect all inhabitants of the Island. Secondly, the fact that the claim on the non-refoulement principle is structured on general conditions. The applicant must present substantial premises for exhibiting concrete risk of irreplaceable harm to the enjoyment of the right at stake.

Notwithstanding, Muhumuza contradicts this stance and says that Teitiota demonstrated to have a higher risk of harm than the majority of the citizens: “New Zealand’s action is more like forcing a drowning person back into a sinking vessel, with the “justification” that after all, there are other voyagers on board”.¹⁰¹ Sacin called for a reverse on the onus, it should be New Zealand to prove that Teitiota and his family had access to potable water.¹⁰² Other authors pointed out that he should have mentioned the prohibition of inhumane and degrading treatment under Article 7 of the ICCPR, not mentioned by the UNHRC, to call for the principle of non-refoulement. The complaint of Teitiota was sent under Article 6 of the ICCPR, which holds protection to the right to life. In this vein, invoking Article 7 of the ICCPR, might have set the duty of non-return.¹⁰³

4. International Governance on Climate Movements

There is a dichotomy in the international approach to climate-induced mobility. As mentioned at the beginning of this piece climate change has a vigorous role in the international panorama. At the same time, as the case of Teitiota demonstrates,

⁹⁹ *Ibidem, supra* note 96, paragraph 9.12.2

¹⁰⁰ Simon Behrman and Avidan Kent, “The Teitiota Case and the limitations of the human rights framework”, *QIL*, No. 442 (2020): 25–39.

¹⁰¹ *Ibidem supra* note 96. UNHRC, *Individual opinion of Committee member Duncan Laki Muhumuza (dissenting)*, communication 2728/2016, (2019).

¹⁰² *Ibidem supra* note 101. UNHCR, *Individual opinion of Committee member Vasilka Sancin (dissenting)*.

¹⁰³ Christopher Caskey, “Non- Refoulement and Environmental Degradation: Examining the Entry Points and Improving Access to Protection”, *Global Migration Centre, Graduate Institute of International and Development Studies*, No. 26 (2020).

international policies are transversely inadequate for protecting people displaced by climate change.

However, relevant endeavours have been made to develop a governance framework at the international level. Reaching the end of the 70s, the policy arena opened to climate change. The First World Climate Conference in 1979 indicated an alarming degree of CO₂ emissions into the atmosphere. Climate change was defined as an urgent global problem that demanded an approach of proportional scale.¹⁰⁴ Since then, there have been several vital moments in safeguarding climate-displaced people. Especially from the first decade of the new century, significant international efforts have been made to resolve this lack of protection for people who move due to climate change.

4.1 Two Decades of International Efforts: From the Cancún Adaptation Framework to the Loss and Damage Framework

In 2008, the Inter-Agency Standing Committee (IASC), responsible for allying agencies and the UN toward the management of humanitarian assistance, lined up the Task Force on Climate Change to “lead the preparation of high-quality analytical inputs”¹⁰⁵ for a framework convention regarding climate change. These intentions culminated in the 2010 Cancún Adaptation Framework, where member states agreed that climate migration deserved equal enforcement as climate adaptation, demanding urgent international action.¹⁰⁶ Paragraph 14 of the Framework was particularly courageous in respecting climate migration. The provision intentionally leapt over the topics of causation and accountability and painted a broad picture of mobility, recognizing human migration and programmed relocation as adaptation strategies to climate change.¹⁰⁷ Additionally, the paragraph acknowledged the necessity for multipronged mechanisms through all grounds of governance.

¹⁰⁴ World Meteorological Organization, *Declaration of the World Climate Conference*, (1979): 4.

¹⁰⁵ IASC, *Addressing the Humanitarian Challenges of Climate Change: Regional and National Perspectives: Findings from the IASC Regional and National Consultations*, (2009): 9.

¹⁰⁶ The Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, (2010): 11, 2 (b).

¹⁰⁷ UN, *Summary of Views Second Session of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention*, (2008): 9.mand

Although a soft law instrument, the agreement raised awareness of the protection and assistance of climate migrants and generated dialogue between climate negotiators and humanitarian agencies, increasing mutual understanding of interests and needs. The provision also had significance from an advocacy perspective, creating an underlying moral recognition from states about the impacts and the need to address climate migration. Additionally, the framework included sensible possibilities for tackling climate migration, having the feasibility of a catalytic role to inspire future policies. Moreover, the instrument revealed the preeminence that planning and relocation will demand.¹⁰⁸ Paragraph 14 (f) played an essential role in the future developments persecuted by the UN High Commissioner for Refugees (UNHCR). In 2011, the organization started to discuss the development of a global guiding framework for climate migration, considered a lighter task because IASC had already revealed the legal gaps.

The UNHCR was inevitably drawn to the debate, although climate migration had been “passed around the agency like a hot potato”¹⁰⁹ since its legal mandate does not reach the scope of the institution, a persistent barrier to formal engagement.¹¹⁰ In 2010, the organization turned to suggested normative responses, describing generalized poor international guidance to adequately face displacement by climate change, especially outside the RC umbrella. In 2011, the UNHCR organized the Bellagio Expert Meeting on Climate Change and Displacement to gather contemporary voices, collect evidence, and discuss financial endorsements. There was a unanimous conclusion of the urgency to create a global guiding framework, particularly in situations of sudden events, although there was an opportunity to regulate other forms of cross-border mobility.¹¹¹

The meeting constituted the pre-establishing event for the Nansen Conference on Climate Change and Displacement, proposed by the Norwegian government, together with the Center for International Climate and Environmental Research and the Refugee

¹⁰⁸ Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford: Oxford University Press, 2012): 271–280.

¹⁰⁹ Nina Hall, “Moving beyond Its Mandate? UNHCR and Climate Change Displacement”, *Journal for International Organizations Studies* 4, No. 91 (2013): 108–10.

¹¹⁰ *Ibidem supra* note 108, at 39–51.

¹¹¹ UNHCR, “Summary of Deliberations on Climate Change and Displacement”, *International Journal of Refugee Law* 23, No. 3 (2011): 1.

Council.¹¹² The event assembled different stakeholders: governments, international organizations, scholars, and civil society. The main objective was to arrange a cast of principles powerful enough to help prevent and manage climate migration consequences.¹¹³ Being of governmental traction, the initiative had a promising power, sidestepping politics and institutional particularities. The project incentivized parties to develop processes and establish standards for individuals and communities, victims of climate-induced movements.

The Nansen Conference ended up setting ten principles with an overwatching character, intending to alert for necessary legal and practical action and shunned light on the creation of a global scale guiding framework.¹¹⁴ In sum, the principles demanded state duties, such as enforcement of appropriate legislation, creation of institutions, and channel of resources. The conference settled that there was the possibility to originate a guiding framework, but subsequent dissent of opinions and distinct approach dimensions predicted a long discussion.¹¹⁵

At this point, international efforts to protect climate displacement met little to modest success. During the latest event, the UNHCR appealed to members for an extension of its juridical scope and revealed a pretension to become the number one agency in the management of protection mechanisms against natural hazards.¹¹⁶ Until that point, the responsibility for environmental-induced movements was established by a consultative procedure based on a case-by-case analysis. This election modality made responses to climate movements unpredictable, resulting in a slow assistance reach. The UNHCR was declared equipped to coordinate the climate migration responses, a formal recognition once the institution had already taken that role on other occasions.¹¹⁷ While

¹¹² Jonas Støre and Erik Solheim, “A Double Predicament,” Nansen Conference: Climate Change and Displacement in the 21st Century, (2011): 4.

¹¹³ Jonas Støre, *Opening Address*, (2011): 2.

¹¹⁴ *Ibidem supra* note 113 at 1–2.

¹¹⁵ The Nansen Initiative on Disaster Induced Cross-Border Displacement, The Nansen Principles, (2012): Principle IX.

¹¹⁶ UNHCR Executive Committee, *UNHCR’s Role in Support of an Enhanced Humanitarian Response for the Protection of Persons Affected by Natural Disasters*, UN Doc EC/62/SC/CRP.19, (2011): 4.

¹¹⁷ UNHCR Executive Committee, *Report of the 61st Session of the Executive Committee*, A/AC.96/1095, (2010): 7.

some believed that it was important to grasp strategies for different forms of mobility, the formal designation was interpreted as exaggerated, as it exceeded the mandate and operational capability of the institution. Some were afraid that the organization would step aside refugees and begin to act as the “forced migration agency”. In contrast, others highlighted monetary implications and sovereignty conflicts.¹¹⁸ The final decision was postponed, and the UNHCR could not call for a global guiding document on climate mobility. States rejected the incentives and pushed away actors with institutional relevance or suggestions developed by experts.¹¹⁹

In this aftermath, Norway and Switzerland suggested an intergovernmental process to consider better the different intricacies of states surrounding climate-induced displacement. In 2012, the Nansen Initiative on Disaster-Induced Cross-Border Displacement was created. The project aimed to generate consensus on fundamental principles and elements regarding the protection of persons displaced across borders attributed to natural disasters, setting an agenda for future action at domestic, regional, and international levels.¹²⁰ The project included a sub-regional consultation process in various locations of the globe, and the promotion of a global dialogue, cooperation, and solidarity to create a soft law protection agenda based on international standards for the protection of victim admission, permanence, and legal status and operational responsibility mechanisms.¹²¹ The Initiative purposely focused on disasters, although early conversations intended to refer to disasters “in the context of climate change”. From a climate justice point of view, the project missed an essential opportunity to address climate-induced movements.

Nonetheless, it was the 2015 Paris Agreement (PA) to include human mobility in the discussion of the more severe challenges climate change threatened. The meeting agreed on an Executive Committee of the Warsaw International Mechanism to create a “task force” on human displacement to develop recommendations for coping, mitigating, and

¹¹⁸ UNHCR Executive Committee, *Report of the 51st Meeting of the Standing Committee*, (2011): paragraph 33.

¹¹⁹ The Nansen Initiative, *A Protection Agenda for Disaster Induced Cross-Border Displacement: Concept Note*, (2012): 7.

¹²⁰ *Ibidem supra*, at 8.

¹²¹ The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, vol.1, (Disaster Displacement, 2015): 2.

addressing climate migration. Nonetheless, when targeting climate migration, the PA only asked ratifying members to assess, respect, and incentivize their duties to migrants. What these rights and obligations were was not clarified. In addition, the conference did not sketch an instrument responsible for considering the rights of climate migrants. Specific procedures were suggested to face loss and damage: emergency preparation, risk evaluation, management, insurance facilities, confrontation of noneconomic failures, and developing forms to create institutional resistance.¹²²

Later that year, adopting the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (Protection Agenda) and the 2030 Agenda on Sustainable Development revitalized interest and awareness of the nexus between environmental threats and migration. The Protection Agenda encouraged states to identify measures for protecting and assisting transnational disaster-displaced persons. The Agenda on Sustainable Development recuperated the importance of the relationship between environmental events and human migration, reiterated in various climate change soft-law mechanisms from the UN. This document provided a serious reflection and policy-oriented dialogue about the mitigation aspect. Moreover, reducing greenhouse gas emissions, promoting sustainability, and creating geoengineering strategies were recognized as essential to eradicate the problem at its genesis.

In 2018, the Global Compact for Safe, Orderly, and Regular Migration (GCM) also represented a relevant breakthrough, as it is the first-ever inter-governmentally negotiated agreement to recognize environmental disasters as drivers of forced migration and the urgency to protect victims.¹²³ The Objective 5 from the GCM called on participating states to use protection mechanisms based on compassionate and humanitarian considerations for migrants compelled to leave their countries of origin owing to sudden-onset natural disasters, as well as to devise planned relocation.¹²⁴

Despite these innovative policy breakthroughs, instruments lack binding force, failing to generate strong commitments. Several states have refrained from adopting the GCM,

¹²² Paris Agreement, UN Conference of Parties 21, (2015): Article 8 (4).

¹²³ Chiara Scissa, "A feeble light in the shadow: The recognized need to protect environmental migrants", *Comparative Network on Refugee Externalisation Policies*, (2019).

¹²⁴ *Ibidem supra*, footnote 49.

weakening its potential to foster cooperation in the realm of migration governance. The 2020 Sustainable Development Goals report notes that only 54% of countries have established adequate migration policies to reduce inequalities and vulnerability, while feeble actions have been undertaken to tackle climate change. Remarkably, the COP25 in Madrid failed to produce standard rules for implementing the 2015 PA.

In summary, there is a short international response to people who move due to climate change. A new approach to prevent, mitigate, and address these consequences appears necessary in the current era marked by increased human mobility exacerbated by climate change impacts.

Chapter II. The Nomenclature Dissent of Displacement by Climate Change

After reviewing the international mechanisms that focus on the legal challenges that climate change migration poses, unprotected human mobility inside and outside of their home territory, violation of human rights, and statelessness due to the disappearance of territory, it can be concluded that the current international protection is and will be insufficient and inadequate. Further, international institutional efforts have failed to shift this paradigm, having only conquered small victories in identifying the problem and creating soft law documents of declarations and guiding principles. This lack of protection demands developing an international strategy to guarantee the rights of people who move due to climate change.

Prior to getting deeper into the protection mechanisms suggested in the literature regarding climate displacement, it is vital to address the terminology issue. The topic of nomenclature may present itself as a tedious discussion. Still, the semantic debate helps define the content of the solution.¹²⁵ Essential elements incorporate the assessment of human movements motivated by climate change: a detailed description of the natural and anthropogenic phenomena that originate migration, a mapping of environmental and human vulnerability (identification of priority risk areas or already affected), identifying the needs of the affected and finally, a definition for them.¹²⁶ Language and words have undeniable importance in the political and regulatory world. Concepts can protect some while leaving out others. Therefore, it is of great significance to understand the trends and patterns in the conceptual dilemma of climatic-induced movements.

¹²⁵ Phillip Warren, "Evaluating the "Climate Change Displacement Coordination Facility: How the UNFCCC Can Address Forced Migration After Paris COP21", *Columbia Law Review* 116, No. 2103 (2016): 8.

¹²⁶ Erika Ramos, *Climate Change: International Law and Global Governance: Volume II: Policy, Diplomacy and Governance in a Changing Environment*, Chapter 24 in *Climate Change, Disasters and Migration: Current Challenges to International Law*. (Nomos Verlagsgesellschaft mbH, 2013): 747

1. Semantic Precision in Climate Mobility: The Quest for an Appropriate Terminology

The morphological inconsistency surrounding climate displacement is the result and cause of different elements. On the one hand, as previously analyzed, climate-induced movements have a complex assessment process that originates diverging views on environmental causes as a source of displacement.¹²⁷ The difficulty in assessing the concept is not only created because of the translucent line that correlates displacement and environmental phenomena but also by how to demonstrate when anthropogenic activities generate new environmental scenarios such as climate change.¹²⁸ This dubious kind has built a barrier to establishing an agreed term on individuals who move as the result of climate change consequences. On the other hand, the lack of consensus on the conceptual definition has been one crucial pushback toward creating an international legally binding answer.¹²⁹ There is no legal definition encompassing the range of situations existent in climate change migratory movements. The inexistence of a lawfully binding locution to refer to this issue has prompted the proliferation of scholarly definitions, where exact words are applied to different realities.¹³⁰ Different terms, *refugee*, *migrant*, and *displaced*, carry with them distinguished legal meanings and

¹²⁷ For example: Stephen Castles, "Environmental Change And Forced Migration: Making Sense Of The Debate", *New Issues In Refugee Research Working Paper*, no. 70 (2002): 4-5. The author accentuates that environmental factors are part of a multi-causal net of influence toward forced mobility; Richard Black, "Environmental Refugees: Myth Or Reality?", *New Issues In Refugee Research Working Paper*, no. 34 (2001). The academic does not consider environmental degradation as a core motive of human displacement; Graeme Hugo, "Environmental Concerns And International Migration", *International Migration Review* 30, No. 1 (1996): 105-131. The expert defends that environmental stressors only prompt displacement when associated with a different turmoil; Diane Bates, "Environmental Refugees? Classifying Human Migrations Caused by Environmental Change". *Population and Environment*, No. 23 (2002): 465–477. The author presents a distinct classification of causes that drive environmental migration.

¹²⁸ Calum Nicholson., *The Place of Epistemological Due Diligence in Relation to the Social and Political Science of Climate Change: the Case of Environmental Migration*, (ClimMig Conference on "Human Rights, Environmental Change, Migration and Displacement, 2012).

¹²⁹ Patrícia Scalco, "Refugiados Ambientais e a Lacuna Jurídica no Direito Internacional Público", *Revista Direitos Humanos E Democracia* 3, No. 5 (2014): 264

¹³⁰ Margarida Marante, "O Acordo De Cotonou E As Migrações Climáticas" (Dissertation, NOVA School of Law, 2019): 97.

are guided by legal frameworks that establish various degrees of international protection.¹³¹

However, not all see the nomenclature dissent as an issue. Some academics question the necessity of fixating terminology. McAdam believes the current indecision can be seen as an opportunity. The author asserts that an agreement on this topic “(...) may permit States a limited discretion, either by failing to define the term or by giving it a particular meaning in certain instruments”¹³². For the professor, the prevailing conceptual absence allows more flexible responses. And in fact, the proliferation of concepts has had positive effects. The conceptual universe developed has been marked by distinctiveness, and dissimilarities from scholars, institutions, and states have shunned light on climate-induced mobility, resulting in different study angles. This dynamic flow within terminology has ultimately generated distinct and better solutions. Thus, the challenge lies in correctly articulating a nomenclature to climate change-driven mobility. The vocabulary is very much dependent on the way individuals and organizations perceive and interpret information regarding climate displacement.¹³³ These situations are based on different aspects: the motive of displacement and the free will of the decision to move (forced or voluntary), and the trajectory chased by the individuals, being of relevance the crossing of an international border or the maintenance within the living state boundaries (internal or external), and the duration of the displacement (temporary or permanent).¹³⁴

To provide an adequate context, it is crucial to demystify the terminology instituted. Turton describes “concept” as a vehicle that opens a mental representation for the meaning or a designation for something from the world. “Concept” is, for that reason, a necessary means to reflect on the world, understand what is in it, interpret it, and act toward the different relations that pose in front of humans.¹³⁵ It is essential and indispensable to eradicate the current dissent in the jargon. Important because the chosen

¹³¹ Brendan Gogarty, “Climate-Change Displacement: Current Legal Solutions To Future Global Problems”, *Journal of Law, Information & Science*, No. 1 (2011): 167-188.

¹³² Jane McAdam, "Environmental Migration", *Global Migration Governance* (2011): 153-88

¹³³ Karen McNamara and Chris Gibson, “We do not want to leave our land’: Pacific ambassadors at the United Nations resist the category of “climate refugees”., *Geoforum* 40, No. 3, (2009): 475.

¹³⁴ IFRC, *Fact Sheet 2 Displacement and Climate: Key Terms*: 1.

¹³⁵ David Turton. “Conceptualising Forced Migration.” *Refugee Studies Centre Working Paper*, No. 12 (2003): 2.

concept will profoundly shape and impact the image and message transmitted.¹³⁶ Further, it clarifies if there are existing protection mechanisms capable of protecting these vulnerable individuals or if it is necessary to build a new one.¹³⁷ And, it is indispensable because it would be inconceivable to discuss the topic of climate change displacement without defining it. Yet, it is not only relevant to be able to talk and identify the term with something existent but also crucial because humanity can act by “producing or constructing it as an object of knowledge”¹³⁸.

Circumscribing the individuals that would integrate our definition and fixating on what circumstances is the first step to establishing a legal framework.¹³⁹ The existence of an accepted definition can guide governmental and international policies to act, allowing them first to understand what they are referring to.¹⁴⁰ This acknowledgement turns nations aware of their obligations, making them able to develop adequate legal strategies for people who move due to climate change.

Borges believes that one of the reasons for the failure to characterize this group of people lies in the wrong approach taken by international experts.¹⁴¹ In her opinion, the views elaborated have been short-sighted, and a holistic approach is needed to assimilate the vulnerability aspect in all shapes and forms. The result is a panoply of definitions in which the elements that distinguish them are nothing “but narcissism of small differences.”¹⁴² Accordingly, it is crucial to start with a conceptual analysis of the definitions suggested by the doctrine. The primordial objective is not to try out hypotheses or create structured theories but to emphasize the different connotations of the concepts.¹⁴³

¹³⁶ *Ibidem*, *supra* note 130, at 36.

¹³⁷ *Ibidem*, *supra* footnote 35, at 32.

¹³⁸ *Ibidem*, *supra* note 135.

¹³⁹ Michel Prieur et al., "Draft Convention On The International Status Of Environmentally- Displaced Persons", *Revue Européenne De Droit De L'environnement* 12, no. 4 (2008): 25.

¹⁴⁰ Irawati Handayani and Anisa Fauziah, “Environmental Induced Displacement: Potential Protection Under International Law”, *Yustisia Jurnal Hukum* 9, No. 2 (2020): 175.

¹⁴¹ Isabel Borges, “International Law and Environmental Displacement: Towards a New Human Rights-Based Protection Paradigm” (Dissertation, University of Oslo, 2018): 80.

¹⁴² *Ibidem*, *supra* footnote 128 at 8.

¹⁴³ David Baldwin, “The Concept of Security.” *Review of International Studies* 23, No. 1 (1997): 5.

1.1 Climate Change-Induced Mobility: Persons and Groups of People as *Refugees*

The first expression on this topic, *ecological refugee*, could be traced back to 1948.¹⁴⁴ Nevertheless, the starting point for the nomenclature creation for displacement caused by environmental factors only developed in the 1970s. Lester Brown was one of the first scholars to study the connection between human displacement and environmental events. The author recuperated the expression of *ecological refugees* in multiple World Watch reports.¹⁴⁵

During the nuclear testing that occurred after the II World War, the term *environmental refugee* began to be discussed.¹⁴⁶ Later, in 1984, the Swedish Red Cross report described how the increase in the number of natural disasters was affecting human mobility.¹⁴⁷ The information caught the attention of the academic Essam El-Hinnawi who eventually named his 1985 UN Environment Programme policy paper, “Environmental Refugees”¹⁴⁸. The expert described this new expression as: “[...] people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and triggered by people) that jeopardized their existence or seriously affected the quality of their life”¹⁴⁹. The author considered that, for example, the disappearance of a solid base of resources due to environmental degradation to a group of individuals that depend upon agriculture was an attack against the survival of those individuals, which turned them into refugees.¹⁵⁰ The Egyptian scholar clarified

¹⁴⁴ William Vogt, *Road To Survival* (Barakaldo Books, 1948).

¹⁴⁵ Lester Brown, *Twenty-Two Dimensions Of The Population Problem*, Paper 5, (Worldwatch Institute, 1976): 40.

¹⁴⁶ Yoko Ogashiwa, *Microstates and Nuclear Issues: Regional Cooperation in the Pacific*. (University of the South Pacific, 1991)

¹⁴⁷ Érika Ramos, “Refugiados Ambientais: Em busca de reconhecimento pelo direito internacional” (Dissertation, Faculty of Law of the University of São Paulo, 2011): 77

¹⁴⁸ *Ibidem*, *supra* note 18, at 61. Jane McAdam and Ben Saul, “An Insecure Climate for Human Security? Climate-Induced Displacement and International Law”, *Sydney Centre for International Law*, No. 4 (2008): 66.

¹⁴⁹ El-Hinnawi, Essam, *Environmental Refugees*. Rep. *United Nations Environment Programme*, Nairobi, 4, (1985).

¹⁵⁰ JoAnn McGregor, *Geography and refugees, Patterns and Process of Change and environment and development review* (Wiley, 2009): 20.

that *environmental disruption* meant “any physical, chemical, and/or biological changes in the ecosystem (or resource base) that render it, temporarily or permanently, unsuitable to support human life.”¹⁵¹ Consequently, El-Hinnawi encompassed “physical, chemical and biological”¹⁵² changes, portraying the destructive effects that resulted from the mismanagement of environmental resources, pollution, and destruction of habitats and livelihood of all species temporarily or permanently.¹⁵³

This institutional recognition contributed to international interest in the topic, and in 1988, there can be found the first mention of the term *climate refugees*. In the report of the Worldwatch Institute, Jacobson talked about climate change as a driver of refugee movements. The author noted that “Among various environmental problems that cause the displacement of people from their habitats, none rivals the potential effects of sea level rise as a result of human-induced changes in the earth’s climate [...]”¹⁵⁴. Still, it was the expression carved by El-Hinnawi that was disseminated in the academic circle.

The 90s decade witnessed an increase in the number of projects and studies dedicated to environmental displacement. This tendency prevails today.¹⁵⁵ Several authors helped validate this usage of nomenclature, while others came up with definitions and categories of refugees.¹⁵⁶ Social scientists developed various valuable revisions of the written literature.¹⁵⁷ Nevertheless, these reviews did not concentrate on critically analyzing the concepts of environmental refugees. Without a doubt, the term *refugee* and, particularly, the expression *environmental refugees* became the most frequently used term while considering the issue of climate-induced movements.¹⁵⁸

¹⁵¹ *Ibidem supra* note 149.

¹⁵² *Ibidem supra* note 141 at 81.

¹⁵³ *Ibidem supra* footnote 149.

¹⁵⁴ Jobi Jacobson, “Environmental Refugees: A Yardstick of Habitability”. *Bulletin of Science, Technology and Society* 8, No. 3 (1988) 7-29.

¹⁵⁵ Francois Gemenne, *Migration And Climate Change: How they became the human face of climate change. Research and policy interactions in the birth of the ‘environmental migration’ concept*, (Cambridge University Press, 2011): 239.

¹⁵⁶ Gaim Kibreab, “Environmental Causes and Impact of Refugee Movements: A Critique of the Current Debate,” *Disasters* 21, no. 1 (1997): 20-38

¹⁵⁷ E.g: Shannon O’Lear., “Migration and the environment: a review of recent literature”. *Social Science Quarterly* 78, (1997): 608-61; Arthur Westing, “Environmental refugees: A Growing category of displaced persons”. *Environmental Conservation*, 19 (1992): 201-207.

¹⁵⁸ E.g. Micha Lazarus, “Environmental Refugees: New Strangers at the Doors”, 2 *Our Planet* no.3 (1990): 12-13.; Stuart Leiderman, *Environmental Refugees and ecological restoration*, (Fourth World Project, 1995).

1.1.1 Environmental/Climate Refugees in International Law

Against this background, a heated debate surrounds using the word *refugee* to describe people who move because of climate change. As stated in the first chapter of this piece, refugees are recognized and protected by International Refugee Law under the Refugee Convention and the subsequent Additional Protocol of 1967. The position from the defenders intrinsically demands a revision and extent of the *refugee* concept as it is presently enshrined in International Law. Raiol believes that the concept of *refugee* constitutes the most cohesive guarantee of the human dignity of individuals who are put in a situation of compulsory mobility.¹⁵⁹ Stavropoulou argues that the use of the word *refugee* is tied to the fact that the expression creates a resonance, “a sense of global responsibility and accountability, as well as a sense of legitimacy and urgency it deserves for impending disasters.”¹⁶⁰

Nevertheless, the UNCHRE, the IOM, the UN-Intern-Agency Standing Committee, and the Nansen Initiative have all challenged the expression of *environmental refugees*.¹⁶¹ As a matter of fact, the UNHCRE has not recognized any of the mentioned or created “refugee concepts” tied to climate mobility. International organizations have made clear that using the term *refugee* concerning climate change-induced movements is not helpful or sound, creates controversy, and does not have any correspondence with the law.¹⁶² Several voices from academia have joined this institutional disregard by analyzing the RC, demonstrating recurring arguments that oppose the “refugee nomenclature”.

¹⁵⁹ Ivanilson Raiol, "Ultrapassando Fronteiras: A Proteção Jurídica Dos Refugiados Ambientais" (Dissertation, Federal University of Pará, 2009): 213.

¹⁶⁰ Maria Stavaroupoulo, “Drowned in definitions?”, *Forced Migration Review*, No. 31 (2008): 11.

¹⁶¹ *Ibidem supra* note 121.

¹⁶² Robin Bronen, “Linking Environmental Change, Migration & Social Vulnerability”, Chapter 4.1, in “Forced Migration of Alaskan Indigenous Communities due to Climate Change: Creating a Human Rights Response”, *SOURCE Publication Series of UNU-EHS*, No. 12 (2009): 5. *Ibidem, supra* footnote 127. *Ibidem, supra* footnote 127. JoAnn McGregor, *Refugees and the Environment in Geography and refugees GEOGRAPHY AND REFUGEES: Patterns and Process of Change* (Richard Black & Vaughan Robinson, 1993): 158.

It is important to highlight again that the human flow of movements caused by climate change is primarily a phenomenon verified within internal borders. That is why international organizations and academics accuse the expression of *environmental refugees* of diluting the dimension of climate displacement. Laczko and Aghazarm point out that the term *refugee* limits the debate on climate displacement only to cross-border movements.¹⁶³ Tacoli complies with this observation, stating that the term *refugee* is a reductionist stand on the complexity of the actual cases of climate-induced mobility.¹⁶⁴

The structural purpose of the RC is a strong and unshakable force, and therefore, international members oppose any redesign or extension. Critics argue that an eventual recognition of climate-displaced people as refugees can weaken or generate confusion towards the RC, resulting in negative consequences for refugees.¹⁶⁵ Boano, et al. state that the admission of *climate refugees* would interfere with the security aspect guaranteed by the convention.¹⁶⁶ Kribreab agrees that there is a perverse side to accepting the concept of *environmental refugees*. The author claims this new term aims to eliminate the political element integrated into the RC definition of *refugee*. By erasing this cause of displacement, states can derogate from the responsibility to grant asylum.¹⁶⁷

Other authors highlight the fact that there is a current protectionist trend that pollutes state action. The international community has been reluctant to accept people displaced by climate change as refugees, especially refugees from developing countries. This custom generates the fear that a “climate refugee permission” would call for additional state obligations regarding climate change. Or, as Hong points out, the recognition of the refugee status could generate an uncontrollable international crisis.¹⁶⁸ The fear coming from developed nations of an outburst of refugees is a detrimental factor in the motivation

¹⁶³ Frank Laczko and Christine Aghazarm. “Migration, environment and climate change: assessing the evidence”, *International Migration Organization*, (2009): 18.

¹⁶⁴ Cecilia Tacoli, "Crisis or Adaptation? Migration and Climate Change in a Context of High Mobility", *Environment and Urbanisation* 21, No. 2 (2009): 513-525.

¹⁶⁵ António Guterres. “Millions Uprooted: Saving refugees and the displaced.” *Foreign Affairs Magazine* 87, No. 5 (2008).

¹⁶⁶ Camillo Boano, et al, “Environmentally Displaced People Understanding The Linkages Between Environmental Change, Livelihoods And Forced Migration”, *Oxford: Refugee Studies Centre*, 2008): 29.

¹⁶⁷ *Ibidem supra* note 156 at 21.

¹⁶⁸ Jeanhee Hong, "Refugees Of The 21St Century: Environmental Injustice", *Cornell Journal Of Law And Public Policy* 10, No. 2 (2001).

of countries to legally recognize state duties toward people who move due to climate change.¹⁶⁹ This “key feature of refugee protection could be undermined, and the lowest common denominator adopted”¹⁷⁰. Acketoft adds that the acceptance would involve a recognition of those persons as political refugees, “a precedent that no country has yet been willing to set”¹⁷¹. Therefore, this situation would almost certainly lead to a position where states would restrict the entrance of refugees, considering them only economic migrants, providing states the choice to grant them.¹⁷² This grand scheme would allow states to pursue their interests in creating more restrictive policies and measures. As a result, the acceptance of the *environmental/climate refugees* would “likely (...) be for the worse”¹⁷³.

1.1.2 Beyond the Refugee Convention: An Empathic Term

As analyzed in the previous point, *environmental/climate refugees* are a legal vacuum under the current International Refugee Law framework. Simultaneously, the word *refugee* is the most utilized when referring to people displaced by climate change events. These contradicting factors can be explained with elements that go further than the mismatches in the requirements of the RC.

For the general population, a *refugee* means seeking shelter and safety in a third country. Terms popularized by the media have inflamed the security discourse, and news about sinking islands have underlyingly referred to the human face impacted by climate change as *refugees*. As previously examined, the expression of *environmental refugees* helped to catapult environmental displacement to the centre of the international community agenda. This term has led to a diffusion of the term *refugee* in the media and literature, where many users allege that it creates an emotional attachment to the theme. More recently, the

¹⁶⁹ Tracey King, “Environmental Displacement: Coordinating Efforts to Find Solutions”, *Georgetown International Environmental Law Review* 18, No. 3 (2005): 554.

¹⁷⁰ *Ibidem*, supra footnote 162, at 162.

¹⁷¹ Tina Acketoft, Doc. 11785, (Council of Europe Parliamentary Assembly, 2008).

¹⁷² *Ibidem*, supra footnote 160.

¹⁷³ *Ibidem*, supra footnote 127, at 10.

literature awakened to this misuse of this term.¹⁷⁴ McAdam analyzed the use of the expression *refugee* and explained that it is applied in the sociological or etymological meaning of the word and not in the legal one.¹⁷⁵ Although the use of the term *refugee* is more applied in non-juridic environments, activists and NGOs played an important part in popularizing the *refugee* term. The misuse of the word *refugee* has even reached the political and regulatory discourse.¹⁷⁶

1.2. Climate Change-Induced Mobility: Individuals and People as *Migrants*

Slowly but surely, other concepts started to be attributed to human movements in the context of climate change. *Migrant* is another term often applied to this new group of vulnerable people.

In 2007, the IOM created the concept of *environmental migrants*. The definition set up by the organization and subscribed by the Council of Europe described *environmental migrants* as: “persons or group of persons who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or chose to do so, either temporarily or permanently, and who move either within their country or abroad.”¹⁷⁷ In the definition, *migrant* acts as an umbrella term: the description reaches temporary and permanent movements, similarly, in the territorial limits; the concept was ample, including national and transboundary movements; and finally, the terminology contained both sudden and gradual environmental changes. The *environmental migrant* definition from IOM was built in a way that possibilities an adaptative response to the challenges

¹⁷⁴ Fabrice Renaud, et alt., “A Decision Framework for Environmentally Induced Migration.” *International Migration* (2011): 49.

¹⁷⁵ Jane McAdam, “Swimming against the Tide: Why a Climate Change Displacement Treaty is Not the Answer,” *International Journal of Refugee Law* 23, No. 1 (2011): 5. Furthermore, the author believes that the diffusion has been conducted by lobby groups that want to highlight the effects of CO2 emissions.

¹⁷⁶ Jean-Claude Juncker, “Tomorrow morning we will have climate refugees”, State of the European Union address in Strasbourg, (2015). Example: Friends of the Earth, “Climate refugees”, *FRIENDS OF THE EARTH* (June 20, 2017). Suong Vong, “Protecting Climate Refugees is Crucial for the Future”, *HUMANITY IN ACTION*, (may, 2017). Omar el. Akkad, “The Urgent need for Legal Protections for Climate Refugees”, *ENVIRONMENTAL JUSTICE FOUNDATION*, (2021).

¹⁷⁷ IOM, *Discussion note: Migration and the Environment*, Doc. MC/INF/288 (2007): 1.

posed by the limitations and requirements of International Law. At the same time, it sustained the space for an assistive role in decision-making to share responsibilities and achieve solutions.

Later, in 2008, the IOM reformed the definition in their Migration Research Series No. 33, defining climate change migrants as “persons or groups of persons who, predominantly for reasons of sudden or progressive changes in the environment as a result of climate change that adversely affect their lives or living conditions, are obliged to leave their homes or choose to do so, either temporarily or permanently, and who move either within their country or abroad.”¹⁷⁸

Since then, other migration definitions have emerged. Bates explains that climate change involves gradual environmental changes, allowing individuals to methodically process when, where, and how they will relocate.¹⁷⁹ And this is the reason why experts often defend the use of the expression *migrant*. On the contrary, Warren uses the expression climate change migrants based on Wyman.¹⁸⁰ Following his line of thought, *climate change migrant* is everyone “whose movement is triggered” partially by climate change.¹⁸¹ Imaginatively, Bronen united the two words into *climagrator*, and the author states that this phenomenon takes place when society is no longer sustainable for environmental or ecological motives.¹⁸²

1.2.1. *Environmental/Climate Migrants in International Law*

Both definitions from the IOM, *environmental* and *climate migrants*, received an outpour of criticism, mainly from international humanitarian institutions. The UNHCR was particularly harsh, accusing it of confusing the already fixated terms of *refugee* and *internally displaced persons*.¹⁸³ To understand the distinct positions in the

¹⁷⁸ IOM, *Migration Research Series*, No. 33 (2009): 5.

¹⁷⁹ *Ibidem*, *supra* footnote at 467.

¹⁸⁰ Katryna Wyman, *Responses to Climate Change Migration*, (2013): 178.

¹⁸¹ *Ibidem*, *supra* note 125, at 7.

¹⁸² *Ibidem*, *supra* note 162.

¹⁸³ *Ibidem*, *supra* note 171 at 16.

literature, it is necessary to paint the labyrinthic specificities that go along with the topic of migration.

Migration is a complex form of mobility. No established line distinguishes forced displacement and voluntary migration. These “are two poles along a continuum”¹⁸⁴, and migrants are inserted in a blurred area where choice and coercion blend. Things get even more complicated when human movements are connected to environmental events.

Despite this, there is an underlying scholarly assumption that migration is connected to the need to survive and the search for better living conditions.¹⁸⁵ For that reason, many pronounce that *migration* demands the existence of a “movement with some degree of voluntary”¹⁸⁶, and that in opposition, *refugees* are individuals that move “forced or compelled to relocate by external forces”¹⁸⁷. Nevertheless, some consider that migration can be forced. There is even a created concept of *forced migration*. The Institute for Environment and Human Security of the UN University defends the concept of *forced environmental migrants*, which derives from the concept of forced migration. The university described this concept as people who must leave their regular living place because of an ecological perturbation, oppositely to voluntary migrants, who may move.¹⁸⁸ Therefore, these authors implicitly assume the existence of both voluntary and forced typologies within the concept of migration.

The ambiguity in International Law has provided an essential part of this dissent. Under International Law, there is no clear definition of *migrant*. The expression *migrant worker* provides the only recognition of the term. Located in the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, a *migrant worker* is “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”¹⁸⁹. Kälin considers

¹⁸⁴ Graeme Hugo, *Climate change-induced mobility and the existing migration regime in Asia and the Pacific*, (Hart Publishing, 2010).

¹⁸⁵ Tiago Jesus, “Um novo desafio ao Direito: Deslocados/Migrantes Ambientais. Reconhecimento, proteção e solidariedade” (Dissertation, University of Caxias do Sul, Brasil, 2009):

¹⁸⁶ Ilan Kelman, “Imaginary Numbers of Climate Change Migrants?”, *Social Sciences* 8, No. 5, (2019): 2.

¹⁸⁷ *Ibidem*, *supra* note 182.

¹⁸⁸ Fabrice Renaud et al., “Control, Adapt or Flee: How to Face Environmental Migration?”, *InterSecTions*, No. 5 (2007): 29-30

¹⁸⁹ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, UN General Assembly resolution 45/158 (1990): Art 2(1).

migration exclusively as a voluntary movement. The author points out that this “understanding is not only enshrined in the UN Convention”¹⁹⁰ on migrant workers but is underneath another definition of migrant worker in the European Convention on the Legal Status of Migrant Workers¹⁹¹.

Some authors defend that the IOM opts for using a “working” meaning of the concept of *environmental migrants*¹⁹², but this has been transversely rejected. The climate migration definition developed by the IOM exposes the nature of the environmental consequences, the typology of movements, and the range of the human path resultant of climate change.¹⁹³ Specific events that impulse human movements are not mentioned. The organization refers to sudden and gradual hazards that “predominantly” affect human life and livelihood.¹⁹⁴ Additionally, the definition does not clarify the circumstances under which people usually move, which allows the reader to infer that the concept encompasses both forced and voluntary mobility.¹⁹⁵

1.3. Human Mobility Induced by Climate Change: Persons and Groups of People as *Displaced*

The last term to be analyzed is *displaced*. This scholarly expression usually pictures a situation of forced displacement with a fear of losing their life. These individuals are protected under the GPID and the 2011 Operational Guidelines on Human Rights Protection in Situations of Natural Disaster.¹⁹⁶ By conducting an analogy between the

¹⁹⁰ The Convention reads in Article 2 (1): “The term “migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.”

¹⁹¹ *Ibidem supra* footnote 171.

¹⁹² International Organization for Migration, *Discussion Note: Migration and the Environment*, Doc MC/INF/288, (2007):6.

¹⁹³ Susana Adamo, “Environmentally Induced Population Displacements”, *International Human Dimensions Programme on Global Environmental Change Update 13*, (2009): 13.

¹⁹⁴ International Organization on Migration (IOM). The definition was put forward at the 94th IOM Council. *World Migration 2008: Managing Labour Mobility in the Evolving Global Economy*, IOM, (2008): 399. IOM, *Definitional Issues* (IOM, 2009). Dominic Kniveton et al., “Climate Change and Migration: Improving Methodologies to Estimate Flows 5”, *IOM*, (2009).

¹⁹⁵ Koko Warner, “Global Environmental Change and Migration: Governance Challenges”, *Global Environmental Change* 20, (2010): 402-403.

¹⁹⁶ Operational Guidelines on Human Rights Protection in Situations of Natural Disaster, IASC, (The Brookings – Bern Project on Internal Displacement, 2011).

concept of an internally displaced person in the GPID, environmentally displaced people are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border. In this definition, a sudden or gradual environmental change triggers displacement and encompasses a temporal range from a temporary situation to a permanent state. This definition highlights the environmental displacement caused by natural or human events that demand international protection, which is important.

With time, the expression of *displaced individuals* has been revigorated and reshaped. A UN General Assembly resolution, together with state actions, has extended the scope of this term in the international debate.¹⁹⁷ The UN does not defend the use of the words *refugee* or *migrant*. For the institution, the correct denomination is “persons displaced in the context of disasters and climate change”¹⁹⁸. Prieur defended the use of the expression *environmentally displaced persons*, defining them as “individuals, families, and populations confronted with a sudden or gradual environmental disaster that inexorably impacts their living conditions and results in their forced displacement, at the outset or throughout, from their habitual residence and requires their relocation and resettlement.”¹⁹⁹ For the expert, the term displaced can more accurately include the various forms and reasons involved in this genre of migration, which is combined with a forced nature and collective aspect. Likewise, the report *Environmental Displacement: Human Mobility in the Anthropocene* believes that environmental displacement is the most appropriate term to transpire the increasing phenomenon of climate-compelled movements.²⁰⁰

Inspired by the term *displacement*, new descriptive expressions have been created to describe movements related to climate change movements: *climate change-induced*

¹⁹⁷ Guy Goodwin-Gill, “Non-Refoulement and the New Asylum Seekers”, *Virginia Journal of International Law*, No. 26 (1986): 900.

¹⁹⁸ UNHCR, *Climate change and disaster displacement*.

¹⁹⁹ *Ibidem supra* footnote 139.

²⁰⁰ UN Environment, *Environmental Displacement: Human mobility in the Anthropocene*, *Frontiers - Emerging Issues of Environmental Concern*, (2016): 72.

*displacement*²⁰¹, *climate change-related displacement*²⁰², or *displacement in the context of climate change*²⁰³. All these terms point to a displacement attributed exclusively to climate change or partially encompassing climatic alterations as a valid driver for moving. Nevertheless, it is necessary to understand the meaning of displacement for international organizations and institutions.

According to the International Federation of Red Cross and Red Crescent Societies (IFRC), *displacement* arises from violent events, such as armed conflict or natural and man-caused disasters. The definition goes forward and includes situational relocation and advancement schemes that often lead to a forced individual and collective exodus. Further, the institution recognizes the necessity to protect and assist these people within or outside borders. Toward the end, the description clears up that “displacement of populations and migration of individuals and groups are distinct but often interrelated phenomena”²⁰⁴. Similarly, the IOM Glossary on Migration adapted the conceptual decision from the UN Office for the Coordination of Humanitarian Affairs Guiding Principles on Internal Displacement, to portray the vastitude of *displacement*, adding the external movements.²⁰⁵ The organization Climate Change and Resilience Platform (CARE) described displacement as a compound of actions and occurrences associated with intense risk, being, therefore, a type of forced mobility. In this view, disaster is the primary driver of fleeing a country.²⁰⁶

Disaster displacement is another concept often referred to in the interconnection between climate change and human movements. The Platform on Disaster Displacement proffers that disaster displacement is a movement composed of people who have been

²⁰¹ CARE, *Evicted by Climate Change: Confronting the Gendered Impacts of Climate-Induced Displacement*, (CARE, 2020); Koko Warner, UN High Commissioner for Refugees, *Legal and Protection Policy Research Series: Climate Change Induced Displacement: Adaptation Policy in the Context of the UNFCCC Climate Negotiations*, UN Doc PPLA/2011/02, (2011).

²⁰² Jane McAdam, *The Normative Framework of Climate Change Related Displacement. “Addressing the Legal Gaps in Climate Change Migration, Displacement and Resettlement: From Sinking Islands to Flooded Deltas*, (Brookings Institute, 2012).

²⁰³ Megan Bradley and Jane McAdam, *Rethinking Durable Solutions to Displacement in the Context of Climate Change*. (LSE Project on Internal Displacement for Brookings Institute, 2012).

²⁰⁴ IFRC, *Policy on Migration*., (IFRC, 2009).

²⁰⁵ *Ibidem*, *supra* footnote 35.

²⁰⁶ *Ibidem*, *supra* footnote 201.

forced or obliged to leave, explicitly mentioning the hazards linked to climate change effects.²⁰⁷ *Disaster displacement* is treated a bit more openly in the definition of the IDMC. Although the institution indicates a situation of obligation or enforcement, immediately after, it describes that the decision to move can be taken in the imminence of a natural disaster event. The definition seems to remain on this path right after, referring to the causes for displacement: the natural event itself (ii), but also the persons who detain a vulnerable character unable to face or resist the impacts of the hazard (iii). However, the concept ends up being limited to only involuntary forces such as “an evacuation ordered or enforced by authorities, or an involuntary planned relocation process.”²⁰⁸

1.3.1 The Advantages of Applying the Word Displaced Persons over Migrant and Refugee

The linguistic architecture of the proposed climate displaced people expressions are a vital remembrance that the centre of the discussion is persons. Fixating *people* as the core of maximum preoccupations dissociates from distanced and dehumanizing concepts that emerged from the brutality in which migration politics play. Fear has been inflicted about the mass influx of people who have been the number one responsible for this dehumanization. People are mainly considered migrants or refugees. Although both terms are not portrayed in a way that is offensive or conducive to a dehumanizing point of view, cultural factors have increasingly mutated the meanings of migrant and refugee.²⁰⁹

Another undeniable aspect attached to both traditional terms has been the racial connotation. As Marzagora affirms, an essential pushback against the racialized monopolization of the discourse of human movements has been the difficulty of including

²⁰⁷ Platform on Disaster Displacement, “Key Definitions”, *Internal Displacement in the Context of Disasters and the Adverse Effects of Climate Change: Submission to the High-Level Panel on Internal Displacement by the Envoy of the Chair of the Platform on Disaster Displacement*, (PIDD, 2020).

²⁰⁸ Internal Displacement Monitoring Centre, Methodological Paper: Assessing the Impacts Of Climate Change On Flood Displacement Risk, (IDMC, 2019). *Ibidem, supra* footnote 205.

²⁰⁹ Andrew Baldwin, “Racialisation and the Figure of the Climate-Change Migrant.” *Environment and Planning A: Economy and Space* 45, no. 6 (2013): 1474–1490.

marginalized individuals in the people category.²¹⁰ Wisner confirms that climate change mobility has been perceived by terms that “fuel xenophobia and racism”²¹¹. An uncommon word could fight the weaponizing the world of politics has conducted towards human movement-related vocabulary. Millis describes personhood as “a robust moral status implying not merely formal juridical equality, but substantively guaranteed equality, in the sense of the political will and allocation of material resources to actively enforce anti-discrimination measures and correct for the legacy of past discrimination”²¹². Therefore, the expression *displaced people* could offer a more effective nomenclature, bringing more attention to this new group of vulnerable people, and can eventually provide an easier acceptance of state responsibilities.

2. Toward Lexical Clarity: Defining Terminology for Climate-Driven Movements

After scrutinizing the three main concepts amidst the nomenclature dissent, the most appropriate term for people displaced by climate change effects can be revealed.

The use of the word *refugee* regarding people displaced due to climate change is a conceptual imprecision toward the current International Refugee Law regime.²¹³ The use of terms such as *environmental refugee* compromises the collective development of a concept that includes people who must move because of climate change inside borders. The definition of El-Hinnawi was not accompanied by a structured set of criteria encompassing all situations that represent climate displacement. The Egyptian author admitted, “In a broad sense, all displaced people can be described as *environmental refugees*”²¹⁴. For the UN Environmental Programme, the expression of *environmental*

²¹⁰ Sara Marzagora, “The Humanism of Reconstruction: African Intellectuals, Decolonial Critical Theory and the Opposition to the ‘Posts’ (Postmodernism, Poststructuralism, Postcolonialism).” *Journal of African Cultural Studies* 28, No. 2 (2016): 161–78.

²¹¹ Ben Wisner, *Climate change and migration: scientific fact or leap of (bad) faith? Invitation to a debate and Radix collection of materials elucidating debate & the assumptions & politics in the background*, (Radix, 2009): 40.

²¹² Charles Mills, *The political economy of personhood, on the human*, (National Humanities Center, 2011).

²¹³ Emily Wilkinson, et. alt, *Climate-induced migration and displacement: closing the policy gap*, (Overseas Development Institute, 2016): 2.

²¹⁴ *Ibidem*, *supra* footnote 149, at 4–5.

refugees was the strategic language that consistently reflected the humanitarian purpose the agency intended to pursue. A world intensely marked by a climate change agenda utilizes this concept to pressure political decisions, better reach broad masses, and call attention to the detrimental consequences of human action in climate change. This explains the lack of analytic attention to detail in the definition.²¹⁵ Additionally, the expansion of the RC is an unlikely probability since a historical element compromises the extension of the regime. There is also a complex architecture necessary for protecting individuals displaced by climate change effects, such as adaptation measures and prevention, investment funds, and protection of most vulnerable territories that are incapable of being established or regulated by the RC. Therefore, the “refugee approach” is inefficient and inadequate.²¹⁶ For these reasons, *refugee* is not the correct terminology to refer to persons and people who move due to climate change.

The term *displaced people* presents one immediate advantage over *refugees* and *migrants*. Both terms have been legally and conceptually connected to the dangers allied to a securitization narrative. The expression of *environmentally displaced people* has not faced severe criticism, contrary to familiar concepts. In addition, the term *people* could highlight the centre of the debate. However, its most significant advantage ends up being its most serious flaw. *Displaced* does not hold the same degree of recognition at the legal level; IDPs mainly occupy the short credit that it detains. When it has juridic status, a unanimous usage circumscribes climate displacement as forced movements, generally connected to armed conflict. Considering that climate movements are, in part, a voluntary trajectory, *displaced people* are also incapable of recognizing the multitude of ways climate change contributes to human mobility.

When it comes to the concept of *migrant*, there is an established tradition to apply it only to situations that involve voluntary movements. Positive outcomes emanate from the *environmental migrant* concept. On the one hand, the term desires to incorporate internal and external displacement led by environmental mutations simultaneously. This concept concentrates on the demands of people who move because of climate change and

²¹⁵ *Ibidem*, *supra* footnote 179, at 446.

²¹⁶ François Gemenne, “What’s in a name: social vulnerability and the refugee controversy in the wake of Hurricane Katrina.”, *Environment, Forced Migration, and Social Vulnerability*, (2010): 36.

considers ecological changes as a single factor influencing human movements. It can be argued that such a concept as forced migration proves the generalized character that migration holds. This application, followed by several relevant international institutions, reveals an assumption that migration represents human movements, whether planned or contemplated as a coping strategy.

Consequently, *migrant* is the most appropriate term to transmit or encompass the different strands of human mobility caused by climate change. It adequately reflects the diversity of causes, the collective character, and the distinct kinds of displacement. As mentioned before, in 2008 the IOM upgraded its definition to *climate change migrants*. This definition is better constructed and equipped with the sensitivity necessary for combating climate-induced mobility challenges.

Separating climate change-induced movements allows to create a foundation for our purpose and establish direct and concessive standards and measures. The use of the expression *climate migrants* can help in directly reducing GHG emissions and improve the allocation duties before situations of displacement.²¹⁷ Including internal and external movements inside one typology of people generates an extensive method. This enormous reach leads to a less specific approach. Still, by detaching a more clear-cut definition, it can be developed a unique capability to integrate and co-relate with established discussions about human mobility, providing the opportunity to merge within more sympathetic conversations about human movements due to climate change. The primary objective of the expression is to mirror the magnitude of climate-induced migration accurately. However, this concept is not immutable. The concept should only serve as a primary instrument for recurrent improvement.

²¹⁷ *Ibidem*, *supra* footnote 141, at 84.

Chapter III. From Natural Hazard to Protection: Assessing Potential Routes for the Protection of Climate-Induced Migration

As it has been previously stated throughout this thesis, there is a transversal consensus about the need for developing climate migration protection under International Law. Academics and practitioners are involved in complex and diverse debates around building a climate migration framework.²¹⁸ Research on climate displacement has collected many publications and normative frameworks using various methodologies, ranging from different actors worldwide.

At the core of the debate are three main groups of proposals that aim to fill the climate displacement gap in International Law, from the ones that go along with the more traditional and immediate thinking processes of the juridical mind to the most alternative and imaginative answers. The most paradigmatic is the formation of an international treaty. Other authors back regional accords between states in the imminence of or experiencing climate migration effects. Finally, there are defendants of soft law instruments, arguing that non-binding instruments are more feasible.

1. The Development of a Multilateral Agreement Addressing Climate-Induced Migration

Once there is no nuclear agency holder of the competencies and powers for regulating on “behalf of the international community as a whole”²¹⁹, diverse hypotheses can be assessed to act upon international challenges collectively. Multilateral agreements are among one of the most important answers to global issues. Firstly, multilateral treaties have a universal character, being open to all recognized states and having a global stretch of action. This ubiquitous nature presents various advantages: coherent and crosswise

²¹⁸ *Ibidem*, *supra* footnote 140.

²¹⁹ M. J. Bowman, “The Multilateral Treaty Amendment Process: A Case Study”, *The International and Comparative Law Quarterly* 44, No. 3 (1995): 540.

approach, facilitated action access, and vast knowledge and information exchange. In this type of legal mechanism, ratification involves a legally binding commitment from the signatures, which grants it an enforceable nature. Being climate change a global paradigm and climate-induced movements often crossing international boundaries, multilateral agreements are particularly pertinent and valuable in climate migration. Multilateral treaties can facilitate international measures to incentivize migration and protect climate migrants by guaranteeing a fair, safe, and orderly legal process.²²⁰

Thereupon, international agreements have been looked at by some as the only instrument capable of confronting climate migration matters. The multilateral agreement proposals suggested by legal practitioners and academics for climate migration are underpinned by the rights and the funding gap. In International Law, internal movements are under an undefined strategic relocation and compensational plan, and the right of permanency does not conceal environmental disruption in a country of origin in most domestic immigration policies of third countries.²²¹ On top of this predicament, there is also a shortage of international fund resources to help finance strategies and mechanisms for climate migration, mainly, directed to the developing world.²²²

There are three essential and influential proposals within multilateral agreements for climate-induced mobility. In the first place, the University of Limoges proposal designated *Convention Relative au Statut International des déplacés Environnementaux*.²²³ Secondly, as a proposal to present in the COP15, the *Convention for Climate Change Displaced Persons*²²⁴ developed by Hodgkinson, Burton, Dawkins,

²²⁰ Edith Weiss, "International Environmental Law: Contemporary Issues and the Emergence of a New World Order", *Georgetown Law Faculty Publications and Other Works*, (1993).

²²¹ Susan Martin, "Climate Change, Migration, and Governance", *Global Governance* 16, No. 397 (2010): 409–10.

²²² *Ibidem*, *supra* footnote 148, at 266.

²²³ Michel Prieur, et alt. "Projet de convention relative au statut international des déplacés environnementaux", *Revue Européenne de Droit de l'Environnement Année*, Vol 12 No.4, (2008) : 381-393.

²²⁴ David Hodgkinson, et alt., "Towards a Convention for Persons Displaced by Climate Change: Key Issues and Preliminary Responses", *The New Critic*, Issue 8, (2008).

Young, and Carom. And thirdly the *Global Convention for Climate Change Displacement*²²⁵ constructed by Docherty and Giannini.

The *Convention Relative au Statut International des Déplacés Environnementaux*, proposed by the University of Limoges in 2008, is considered one of the most influential and important proposals in the topic of human mobility environmentally induced.²²⁶ According to Prieur, international environmental law offers a barrier to an international legally binding instrument in climate displacement. As a result, the author acclaims a human rights perspective and protection of the convention.²²⁷ To that end, the right of movement written in the convention is an “environmental adaptation” of the right of freedom of movement present in Article 13 of the UDHR, which embodies the duty of states not to try to stop displacement. Furthermore, persons at risk of displacement have the right to be consulted and must confirm or refuse displacement. It can be highlighted the uniqueness of the solution firstly through the right of the receiving country to have a choice in accepting climate-displaced people. Secondly, even though there is a right to the freedom of choice by displaced persons, that right is subjacent to the presence of a duty to receive from those chosen countries.²²⁸ To secure its applicability, the proposal designates a tabulation of principles, such as the principle of solidarity, which ponders the duty of states to contribute to the best of their capabilities financially; the principle of common but differentiated responsibilities; the principle of effective protection, that requests states to mirror the spirit of the convention in their public policies; followed by the principle of non-discrimination; and the principle of non-refoulement from the RC.²²⁹ Furthermore, the hypothetical convention contemplates several human rights-inspired rights for climate-displaced people like the right to water and food, housing, legal recognition, education, and to return when the motive of displacement has disappeared.²³⁰ The Global Agency

²²⁵ Bonnie Docherty and Tyler Giannini, “Confronting a Rise Tide: A Proposal for a Convention on Climate Change Refugees”, *Harvard Environmental Law Review* 33, (2009): 350-403.

²²⁶ Zelma Tolentino and Liziane Paixão, “Deslocados Ambientais: Uma análise sob a perspectiva das propostas de proteção jurídica específica”: 18.

²²⁷ *Ibidem*, *supra* footnote 139.

²²⁸ *Ibidem*, *supra* footnote 223, at 7.

²²⁹ *Ibidem*, *supra* footnote 223, at 3, article 4-8.

²³⁰ *Ibidem*.

for Environmentally Displaced Persons, the coordination facility commended by the Limoges project, would elaborate studies, evaluate policies, provide aid, manage relocation, and support partner organizations.²³¹ The University also praised the development of a world fund for the collection and management of the numbers disposed of by states for mandatory duties, and voluntary donations from other nations or private actors.

The *Convention for Climate Change Displaced Persons* was created in the same year. The convention mainly focuses on the long-term resettlement of climate-displaced people, internally or externally, according to the UNFCCC principles. An imperative principle in this regard is the principle of common but differentiated responsibilities, by which assistance and accommodation would be proportional to climate change contribution, mainly on GHG emissions.²³² The Climate Change Displacement Organization (CCDO), suggested by the convention would have global authority and reach over the protection of climate-displaced people and would be supported by different organs: an assembly, responsible for the administrative competencies, a council, and a research organ. The authors limit the right to funds only to ratifying parties to sustain the financial burden that the climate migration protection strategy implicates. From an assistance point of view, the responsibility for internal movements should be shared between the state of origin and the international community. The third and receiving state country should sustain external crossing.²³³ Moreover, the authors of this proposal file a special compartment for addressing the situation of citizens from SIDS, enumerating principles that should be attended in this particular instance, such as the principle of self-determination and proximity, by which the resettling process should occur within the closest state from the state of origin, another principle designated is cultural preservation.²³⁴ As a financial mechanism, the *Convention for Climate Change Displaced Persons* fund would support adaptation and resilience-building efforts for climate-

²³¹ *Ibidem*, *supra* footnote 223, Article 21.

²³² Alan Dupont and Graeme Pearman, "Heating Up the Planet: Climate Change and Security", *Lowy Institute for International Policy*, No.12 (2006).

²³³ *Ibidem*, *supra* footnote 224, at 17.

²³⁴ *Ibidem*.

displaced individuals. Financed by contributions from developed countries, the fund would be used to support the development of sustainable livelihoods, provide essential services, and create new economic opportunities for climate-displaced people. Furthermore, the convention even mentions the utilization of monetary incentives of the UNFCCC Kyoto Protocol Clean Development Mechanism, whereby developed countries finance projects in emissions reduction in developing countries.²³⁵

The Docherty and Giannini proposal for climate migration is a sweeping groundwork, created in the following year, for addressing the needs of people forced to migrate due to climate change repercussions. The outline was developed by Mary Docherty, a human rights lawyer, and Justin Ginnetti, an international development specialist, toward a global convention on climate displacement that established protection for the human rights of climate migrants. The authors sketched the convention based on the RC, which they believed owned the convenience of having a developed foundation, such as the principle of non-refoulement.²³⁶ Also, the proposed convention would be based on human rights principles, including the rights to life, dignity, and security. The Global Climate Displacement Authority would be accountable for monitoring the implementation of the convention and providing technical and financial assistance to impacted communities. A concrete advantage of this creation would be a burden-sharing regime, where hosting states must guarantee human rights safety, and parallelly, home states are responsible for mitigation and coping measures. The entire international community would be proportionally pledged, concerning the level of emissions and economic capacity, to financially assist countries dealing with all sorts of migration resultant from climate change effects.²³⁷ Equally, the convention calls for the creation of an instrument that establishes a global fund to assist climate refugees. The authors give an example of the fund Global Environment Facility run by the UNFCCC and suggest the creation of a protocol with the institution to develop the Climate Refugee Protection and Resettlement Fund.²³⁸

²³⁵ *Ibidem, infra*, footnote 255.

²³⁶ *Ibidem, supra* footnote 225, at 377.

²³⁷ *Ibidem, supra* footnote 225, at 379.

²³⁸ UNFCCC, *Funding Under the Convention*, Decision 7/CP.7: U.N. Doc. FCCC/CP/2001/13/Add.1, (Conference of the Parties 7, 2001): 2-3.

1.1. A Critical Examination of the Formation of a Multilateral Agreement

The proposals toward an original multilateral agreement for climate-induced movement protection seek to fill the normative gaps and offer comprehensive solutions. Overall, the proposals for an international treaty on climate-driven migration possess three common traces: the basis of international human rights law and international refugee law principles, the creation of a coordination institution for climate movements, and the development of a fund.

However, suggestions are often ambiguous. A recurring flaw is that experts conduct their research on the “how” rather than the “why” or “when” they are filling specific gaps. There is no reasoning behind their prioritization.²³⁹ As a result, proposals for a multilateral agreement on climate migration are susceptible to three main criticisms: lack of focus, morality basis, and questionable feasibility.

Human movements are typically provoked by components outside human control, such as war or poverty. These victims also lack international legal protection, raising the question of what differentiates climate migration, making it worth spending ample political and financial resources to construct and enforce a new global agreement.²⁴⁰ McAdam revives the question of economic, social, and political factors behind migration, which makes her doubt the reasoning and effect of a treaty based on the protection of climate migrants, instead of focusing on the inducing aspects of migration. Also, responses often devote little space to contend with the need for implementation, only superficially mentioning them. Additionally, the philosophical literature that backhands these institutional-guided proposals plays a pivotal part in dissenting the necessity and fairness of the international community duties while forgetting the dependence upon the

²³⁹ *Ibidem*, *supra* note 17, at 76.

²⁴⁰ Alexander Betts and Esra Kaytaz, “National and International Responses to the Zimbabwean Exodus: Implications For the Refugee Protection Regime”, *New Issues in Refugee Research*, No. 175 (2009).

institutions responsible for the implementation denominator.²⁴¹ Authors demonstrate a lack of focus, rushing to develop a convention, despite not fully contemplating the implications of an appropriate answer.

Another element of criticism of multilateral agreement proposals is the moral basis merged in their reasoning. To repair the disparities that asymmetrically separate the world, leading proposals in climate-induced movements suggest that developed countries, the most contributors to climate change, should repair their actions in developing countries, usually the most impacted ones, based on an obligation to assist.²⁴² Assistance would involve a financial transfer from developing to developed countries to cover the costs of climate migration, and secondly, a principle of non-refoulement that would allow citizens from fragile countries to remain in developed nations until dignifying conditions are restituted.²⁴³ Wyman declares that deriving from a moral stand, the duty of assistance from developed to developing countries is based on distributive and corrective justice.²⁴⁴ Posner and Sunstein have studied the adversities of employing corrective justice to help mitigate climate change causes. Transposing their conclusions to climate migration, applying corrective justice would involve admitting GHG emissions as wrongdoing.²⁴⁵ After that, only the directly responsible (companies, people, the state) for those greenhouse emissions are demanded to revert it. Nevertheless, the wrongdoers have frequently disappeared once climate migration becomes a reality, and this could result in no one with a duty to repair. A third requirement that composes corrective justice is the assimilation of a cause-effect relationship between the wrongdoing and the hazards. It would be impractical to substantiate that specific emissions driven by the developed world are responsible for the environmental harm in developing countries.²⁴⁶ Authors

²⁴¹ Sumudu Atapattu, "Climate Change: Disappearing States, Migration, and Challenges for International Law", *Washington Journal of Environmental Law and Policy* 4, No.1 (2014): 32.

²⁴² David Weisbach, *Feasibility and Climate Justice: Normative Theorizing*. (Rowman & Littlefield Publishers, 2021): 536–538.

²⁴³ Eric Posner & Cass Sunstein, "Climate Change Justice", *Georgetown Law Journal*, No. 96 (2008): 1586.

²⁴⁴ *Ibidem*, *supra* footnote 180 at 150.

²⁴⁵ *Ibidem*, *supra* footnote 243, at 1565.

²⁴⁶ *Ibidem*, *supra* footnote 243, at 1586-1597.

criticize that a substantial interference or contribution toward GHG emissions is a loose criterion that threatens the application of a valid metric.²⁴⁷

A different argument that opposes an international treaty on climate migration is feasibility. There is an essential element related to the slow procedural aspects of treaty law due to the prolonged process and agreements that multilateral treaties involve, especially when dealing with a regulatory gap.²⁴⁸ The international document that possesses the standards regarding multilateral agreements is The Vienna Convention on the Law of Treaties (VLCT).²⁴⁹ The creation of a new treaty is initiated by recognizing a topic that demands international regulatory action. After this first step, there are several phases until the eventual implementation: declaration of consensus, studying, drafting, negotiation, and then ratification or rejection. The negotiation aspect of all these procedural requirements is the most time-consuming because it implicates a “mediation of the various interests concerned”²⁵⁰. In addition, Article 9 of the VLCT demands that the words in the treaty have the consent of all parties. After that comes the ratification part, which can take years due to a lack of signatures. A specific representation of this treaty-making paradigm is the Biodiversity Beyond National Jurisdiction. The agreement was recommended back in 2015, negotiation began in 2018. It was only adopted recently, in June of 2023.²⁵¹ By the same token, there is an international protectionist trend at the institutional and legal levels which obstructs the development of new protective rights instruments.

Furthermore, in contrast with trade and investment, migration has been marked by a slow-paced multilateralism. Migration and climate policies have been at the core of political sensitivity, constituting a perfect combination for harsh periods of negotiation,

²⁴⁷ Daniel Farber, “The Case for Climate Compensation: Justice for Climate Change Victims in a Complex World”, *Utah Law Review*, No.2 (2008): 1640.

²⁴⁸ Walter Kälin and Nina Schrepfer, “Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches”, *UNHCR Legal and Protection Policy Research Series*, (2012).

²⁴⁹ Vienna Convention on the Law of Treaties, UN Treaty Series, vol. 1155, (1969): 331.

²⁵⁰ *Ibidem*, footnote 220.

²⁵¹ *Ibidem infra* footnote 278. Elizabeth M. De Santo et al., “Stuck in the Middle with you (and not Much Time Left): The Third Intergovernmental Conference on Biodiversity Beyond National Jurisdiction”, *Marine Policy*, No. 117 (2020).

ratification, and implementation of a multilateral agreement.²⁵² The implementation of a new multilateral instrument would demand states additional obligations for protecting individuals from different nations, making it difficult for an *ex-ante* assessment due to the future ambivalent consequences caused by climate change. The present allocation of migrants is mainly in developing nations, which might overwhelm developed countries with a massive and almost entire burden of climate migrant allocation.²⁵³ The development of a new international instrument for climate change would implicate courageous and difficult transversal political decisions from all countries. Political will is essential and is one of the most significant motives for climate refugees not being protected under the current International Refugee Law regime.²⁵⁴ If the international community is not open to slightly altering the RC, there is not much hope for the international ratification of a Climate Migration Convention now. Additionally, even if ratified, there are still concerns. The dropout of powerful states from agreements has jeopardized the aim of climate mechanism proceeds. For instance, the Kyoto Protocol (KP)²⁵⁵, which sets duties for GHG emissions, has seen the USA refuse its ratification, leaving the most extensive historical emitter out of the agreement.²⁵⁶ Besides, the KP has been marked by a generalized sense of failure. Several ratifying countries did not achieve their commitments to reducing emissions. Canada saw GHG emissions exponentially increase during the established deadlines and withdraw from the protocol.²⁵⁷

2. Protecting Climate Migrants through Regional Agreements

Albeit climate change is a global phenomenon, there is an inherent regional component in climate change and its driven migration. On the one hand, climate change affects localized parts of the globe with specific harshness, and on the other, climate migrants

²⁵² *Ibidem*, *supra* footnote 127.

²⁵³ Benoit Mayer, “The International Legal Challenges of Climate-Induced Migration: Proposal for an International Legal Framework”, *Colorado Journal of International Environmental Law and Policy* 22, No. 3 (2011): 397.

²⁵⁴ *Ibidem* footnote 132, at 17.

²⁵⁵ Kyoto Protocol to the UNFCCC, (1997).

²⁵⁶ *Ibidem*, *supra* footnote 243 at 1579.

²⁵⁷ Adam Vaughan, “What Does Canada’s Withdrawal From Kyoto Protocol Mean?”, *THE GUARDIAN*, (Dec. 13, 2011).

repeatedly move to countries that share proximity with their home states. Accordingly, policymakers have begun to explore the potential of regional approaches to climate migration protection. There are assorted inspiring examples of legal regional responses to try governing climate-induced movements, initiatives such as the Kampala Convention²⁵⁸, the Convention of the Specific Aspects of African Refugees from 1969²⁵⁹, or the Cartagena Convention²⁶⁰.

The Kampala Convention marked an unprecedented victory, becoming the first hard law mechanism for protecting climate-displaced persons. Even though the Convention focuses on IDPs, “there are many provisions (...), which could guide the formulation of a possible future legal mechanism providing for cross-border climate displacement”²⁶¹. Asymmetrically, the Convention of the Specific Aspects of African Refugees emanated from the urgency of controlling and eradicating the vulnerability of the African citizens who had to move within the continent for various motives, among other things, environmental disruption.²⁶² Similarly, the American, Cartagena Declaration arose from the Regional Meeting about Climate Change and Migration, where it was mentioned that a regional mechanism was imperative to solve the crisis on the horizon regarding climate-induced mobility.²⁶³ There was an understanding that there were massive refugee migration routes that mandated a more accepting status, chartering what kind of protection a person escaping a situation of desertification has under International Law. For that purpose, the Convention extended the strictness of the RC by simply, stretching the refugee concept to those escaping “events seriously disturbing public order.”²⁶⁴

²⁵⁸ Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), African Union, (2009).

²⁵⁹ Convention Governing the Specific Aspects of Refugee Problems in Africa, Sixth Ordinary Session, Organization of African Unity UN Treaty Series No.14691, (1969).

²⁶⁰ Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, UN Environment Programme ISBN: 978-92-807-3255-9, (2000).

²⁶¹ Lesotho Global Consultation Conference Report, *Comments by EU delegation in The Nansen Initiative*, (2015): 139.

²⁶² *Ibidem*, *supra* footnote 259, at Preamble, n.1.

²⁶³ Érika Pires, et al. *Refugiados Ambientais*, (UFRR, Universidade de Roraima, 2018): 346.

²⁶⁴ *Ibidem*, *supra* footnote 259, art. 1(2).

Also, from a SIDS protection perspective, regional solutions have been put into practice. For instance, the SIDS from the Pacific have two viable regional options, respecting the principle of proximity and cultural identity: New Zealand and Australia. New Zealand has contrived an open system, having, since 2001, a migration agreement with the islands of Tuvalu, Fiji, Kiribati, and Tonga named the Pacific Access Category. By way of this document, New Zealand defines annual raffles of quotas that provide residency visas for 250 citizens of these islands. To benefit from the agreement, the person needs to be between 18 and 45 years and have a proven work offer in New Zealand, knowledge of the English language, and good health.²⁶⁵

2.1. Assessing the Impact of Regional Agreements in Regulating Climate Migration

Regional approaches are not unanimous regarding climate change migration, as authors have pointed out numerous flaws. In this sense, Gemenne and Ionesco write that the biggest blemish of the regional approaches is that they often overlook the problematic architecture of climate-induced movements.²⁶⁶ Experts believe that climate change demands a globally coordinated and multilateral answer, describing regional approaches as narrow and limited scope, only focusing on allowing people to move from nearby zones, neglecting displacement, resettlement, and relocation. Likewise, others convey that regional approaches are a coping answer, not worried about having a mitigation input, incapable of addressing the issues outside the immediate emergency of climate migration, leaving root motives to be fixed. Authors feel that this limited nature reaches the disdain for an entire range of stakeholders, along with climate migrants themselves.²⁶⁷

Furthermore, the first couple of scholars warns that regional approaches can become a prompt factor for inequality, ultimately leaving citizens from certain parts of the world with protection and others not.²⁶⁸ An analogous preoccupation for Furunes is that singular

²⁶⁵ Pacific Access Category Resident Visa. New Zealand Immigration. New Zealand Immigration, Pacific Access Category Resident Visa.

²⁶⁶ Francois Gemenne and Dina Ionesco, *Climate change, migration and regional integration: A global overview*, (IOM Publications, 2014).

²⁶⁷ *Ibidem supra*.

²⁶⁸ *Ibidem supra*.

specifications provided by regional agreements could end up in an uneven burden. The telescoped regional effects of climate change migration could result in an unbalanced distribution, loss of population, or influx of climate migrants within countries near frontiers. This disproportionated disparity between the involvement of nations within the region and the ones far from it can comprise a securitization strategy, ruining the progress of a humanitarian solution.²⁶⁹

From the practical point of view, two cases of failure may contradict some of the apparent assets of existing regional mechanisms for climate-induced movements. The first example is the Cartagena Convention, considered a courageous and innovative regional step toward protecting climate refugees. Nonetheless, in the Committee of the International Conference on Central American Refugees, the Committee of Legal Experts clarified that the improved definition of *refugee*: “other circumstances which have seriously disturbed public order”, only foresaw man-caused and not natural events. This resulted in an ambivalent limbo, where experts discuss if natural phenomena aggravated or generated by climate change are natural or human-made.²⁷⁰ Consubstantially, the Pacific Access Category, also a positive reinforcement of efforts, does not hold a pragmatic scope needed for acting as a humanitarian assistance mechanism.²⁷¹ The cumulative criterion implicated in the instrument excludes a significant part of climate migrants, because of its work-motivated trace. Another point is the short ambition of the plan, establishing a quota that would take 1,200 years for a complete evacuation of Tuvalu island.²⁷²

Despite these limitations, regional migration mechanisms present additional advantages for climate migration protection. Shelton unveiled that regional agreements are more

²⁶⁹ Mathilde Furunes, “The Legal Protection of Climate Change Refugees: An Analysis of the Proposed Solutions to Closing the Protection Gap”, (Dissertation, UiT Arctic University of Norway, 2021): 45.

²⁷⁰ Gregory McCue, “Environmental Refugees: Applying International Environmental Law to Involuntary Migration”, *Georgetown International Environmental Law Review* 6, No. 1 (1993): 175.

²⁷¹ Marina Mattar. “Migrações Ambientais, Direitos Humanos e o caso dos Pequenos Países Insulares. Instituto de Relações Internacionais”, (Dissertation, Universidade de São Paulo, 2012): 86.

²⁷² Patrícia Braga, “A grande casa no fundo do mar: Tuvalu e os impasses políticos ambientais contemporâneos” (Dissertation, Universidade Estadual de Londrina, 2012). *Ibidem*, *supra* footnote 83.

successful and grasp more importance than global treaties.²⁷³ Regarding the political susceptibilities of climate migration, regional agreements are a more liable hypothesis than multilateral agreements.²⁷⁴ There is a higher prospect of nation-states abolishing their authority at a regional scale because they relate to similar situations among states. Neighbouring nation-states have higher levels of trust and have analogous concerns. This relationship boosts the predisposition for obtaining faster ratification, consensus, and negotiation, which could ultimately prevent climate-induced displacement from being left at an “international impasse”²⁷⁵. Subramanian and Urpelainen focused their study on the feasibility of ratification of regional agreements. They concluded that regional agreements on cross-border displacement with equal vulnerability in neighbour countries could “achieve a greater level of commitment from participating states than might otherwise be achieved at the international level”²⁷⁶. To the protection inequalities critique, authors that support regional agreements say that a fragmentation of the law would grant fundamental dispersed levels of protection.

Regional mechanisms have ventured to broaden the refugee definition contemplated by international law, which reveals the proneness of state nations to go beyond the commitments drawn by the international community.²⁷⁷ Williams provides a solid example of a challenge that was properly resolved through a regional scheme, the Regional Seas Programme under the UN Law of the Sea Convention (UNCLOS). This scheme, composed of 13 regional programs, engaged regional states to protect the shared marine environment “by concluding regional treaties and action plans responding to the specific needs of states and establishing relevant and appropriate responsibilities and obligations”²⁷⁸.

²⁷³ Dinah Shelton, *Commitment and Compliance: The Role of Non-binding Norms in the International Legal System*, (Oxford University Press on Demand, 2003).

²⁷⁴ Aoife McMahon, “The Role of the State in Migration Control”, *Immigration and Asylum Law and Policy in Europe* 40, No. 7 (2017): 203.

²⁷⁵ Platform on Disaster Displacement, *State-Led, Regional, Consultative Processes: Opportunities to Develop Legal Frameworks on Disaster Displacement*, in *CLIMATE REFUGEES; Beyond the Legal Impasse?*, (Routledge, 2017).2017): 137.

²⁷⁶ Angela Williams, “Turning the Tide: Recognizing Climate Change Refugees in International Law”, *Law & Policy*, No. 30 (2008): 518.

²⁷⁷ *Ibidem supra*.

²⁷⁸ Convention on the Law of the Sea, UN Treaty No.1833, UNTS 31982 (1994).

Therefore, regional approaches can provide valuable and singular advantages for the protection of the rights of climate migrants through the contemplation of neighbouring assistance and cooperation, particularly in unexpected natural catastrophes generated by climate change.

3. From Norms to Practice: Soft Law Mechanisms for Climate Migrant Protection

International Migration Law primarily comprises mechanisms with a soft law nature. These instruments do not hold binding power.²⁷⁹ Soft law is defined as a written mechanism that contains “principles, norms, standards, or other statements of expected behaviour”²⁸⁰. According to the International Court of Justice, soft law is applied through treaty law, international customs, and law principles.²⁸¹ Although from a regulatory perspective, soft law instruments are not coated in legal protection, they can lead to advancements in law, and they could be later crystallized into binding or customary law. Thus, soft law instruments have attested their effectiveness, many times leaping to enforceable treaties or integrating international customary law as a result of state practice.²⁸² Custom acts as a silent and agreed-upon regulatory source, a generalized and consistent practice that generates a conviction of obligation, resulting in soft law instruments becoming binding in an informal manner.²⁸³

In the latest decades, soft law mechanisms have proliferated due to the increase in involving actors and situations deserving of agreements. The lack of a political scenario for architecting and implementing an international agreement on climate migration has wondered if a viable possibility could lie in soft law approaches.²⁸⁴ The topic of climate migration regulation is no exception.

²⁷⁹ IOM, *Migration Research Series*, No. 45, (2016); IOM, *Migration Governance Framework*, C/106/40, (IOM, 2015).

²⁸⁰ Dinah Shelton, *Soft Law*, in *Handbook of international Law* (Routledge Press, 2008): 3.

²⁸¹ Statute of the International Court of Justice, International Court of Justice, (1946): Art 38 I.

²⁸² *Ibidem*, *supra* footnote 280, at 1.

²⁸³ André Ferreira et al., "Formation and Evidence of Customary International Law ", *UFRGS Model United Nations Journal*, No.1 (2013): 182-201.

²⁸⁴ *Ibidem*, *supra* footnote 263 at 348.

Terada postulates that a non-binding strategy is the most effective option for granting timely and temporary safeguards for climate migrants. With time, the author assigns, soft law agreements, such as the UDHR, can acquire solid legal supremacy and shift toward customary law. In her theory, soft law should serve as a middle ground to escape the institutional bureaucracy that pollutes international binding agreements and fill the gap within the growing need for protecting climate migrants.²⁸⁵ Alongside this reality, other authors claim that the principle of non-refoulement is now a matter inserted as customary international law.²⁸⁶ McAdam and Saul point out that “non-refoulement under the treaty and customary international law now encompasses non-return to persecution, arbitrary deprivation of life, torture or cruel, inhuman, or degrading treatment or punishment.”²⁸⁷ Distinctively, Kolmannskog acclaims a soft law approach, invoking the GPID as a fruitful example. By way of his premise, these principles offer protection against human displacement and provide a framework of humanitarian assistance during the return and resettlement period. The expert articulates that the dissection of the GPID can obtain prized information for competent action of soft law towards climate migration. Assembled out of a time where the political will was almost inexistent for one more convention, the principles demonstrated resilience and innovation. Innovative because they were based on already established mechanisms of human rights, humanitarian, and refugee law.²⁸⁸ Resilient because, as Cohen observes, these principles have created a catalytic effect on the regulatory dimension, especially the one with legal enforcing character, having been implemented as a regional framework for the 2006 Great Lakes Pact in Africa, which has been transposed into the domestic laws of more than 20 states. Also, in 2008 the hard law, the Kampala Convention, ratified by 53 African countries, praised the GPID, mandating countries to take visible measures to implement them.²⁸⁹

²⁸⁵ *Ibidem*, *supra* footnote 35, at 79

²⁸⁶ Miguel Esteban, “Pequenos Estados Insulares”, *Jubilut*, Universidade de São Paulo, (2018).

²⁸⁷ *Ibidem*, *supra* footnote 148, at 378–79.

²⁸⁸ Vikram Kolmannskog and Lisetta Trebbi, “Climate change, natural disasters and displacement: a multi-track approach to filling the protection gaps”, *International Review of the Red Cross* 92, No. 879 (2010): 728.

²⁸⁹ Roberta Cohen, “Lessons Learned from the Development of the Guiding Principles on Internal Displacement”, *Forced Migration Review*, (2013): 11.

3.1. Evaluating Soft Law Instruments for Climate Migration

Soft law instruments are far from being an international consensus answer. Several authors and experts have exposed opposing arguments regarding the nature of these instruments and the specific effects they would have to protect climate migrants.

The first and most apparent downfall of the soft law approach is the lack of a binding nature, which complicates compliance and accountability. States have revealed resistance to following soft law principles, somewhat because they cannot be held accountable for their detrimental actions and inactions.²⁹⁰ Further, being composed of principles and guidelines, soft law instruments are usually ambiguous and uncertain regarding their scope and application, not contriving a robust proposition to protect the rights of climate migrants.²⁹¹ Another downfall of soft law constructions is that reporting and compliance mechanisms, essential for the appropriate protection of climate migrants, are rare. Finally, soft law instruments do not hold the strength to gather sufficient funding resources to implement the frameworks and policies necessary to protect climate migrants.

An advantage of soft law integration as a customary regulation for climate migrants is that it would apply to all actors at the international level, holding up the dispersed development of the legal regime. Nonetheless, for this to happen, there needs to exist a uniform action and practice, which is unlikely regarding the reluctance of most countries, especially the most powerful ones, which have a substantial weight in GHG emissions. The same occurs with the hope that the non-refoulement principle enters this international law sub-discipline. Without a jurisprudential extension, the inflictions produced by climate change appear not to detain the amount of severity of harm necessary to invoke the non-refoulement principle in this scenario. Furthermore, embedded in the human rights

²⁹⁰ Walter Kälin et al., “Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges”, *The American Society of International Law*, (2010): 5.

²⁹¹ Greg Shaffer & Mark Pollack, “Hard vs. Soft law: Alternatives, Complements and Antagonists in International Governance”, *Minnesota Law Review* 94, No. 706, (2010): 714–15.

law regime, the non-refoulement principle obliges a claim outside their country of origin.²⁹²

Despite the abovementioned challenges, soft law instruments possess essential benefits for protecting climate migrants. Hillgenberg states that soft law agreements result from the non-interest demonstration of states in engaging in full “fledged law”.²⁹³ Soft law mechanisms carry a more straightforward negotiation process due to their shorter binding force and homeless power on state sovereignty. Soft law processes produce rapid and effective results as they avoid the controversial domestic ratification process. In addition, soft law instruments allow non-state actor action and creation, aligning a different range of players. Also, these mechanisms have an elastic character, which makes them more flexible to alterations, advancements, and pushbacks, creating a dynamic response. Experts argue that by not enforcing legal action, states can indeed alter their practice, while simultaneously creating the foundation for what would be a future climate migration convention.²⁹⁴ In this line, Shelton has unveiled the decisive role soft law instruments have as a supplement and “filler of gaps” in common binding topics of international law, instead of completely substituting enforceable law.²⁹⁵ A soft law approach can be designed to inscribe the objectives that the international community wants or needs to reach.²⁹⁶ As previously mentioned, soft law mechanisms can lay fertile ground for the emergence of customary international law, revested as a reflection of a subjective state responsibility when their recurring action is aligned with the *opinio iuris*.²⁹⁷ As such, Kälin and Schrepfer signal the fact that soft law is a perfect balance component between state sovereignty and the necessity of creating and implementing norms for international challenges, which increases the contingency of acceptance.²⁹⁸

²⁹² Bruce Burson, *Protecting the Rights of People Displaced by Climate Change: Global Issues and Regional Perspectives*. No.159, (Climate Change and Migration: South Pacific Perspectives, 2010): 162–67.

²⁹³ Hartmut Hillgenberg, “A Fresh Look at Soft Law”, *European Journal of International Law* 10, No. 33 (1999): 504.

²⁹⁴ Sumudu Atapattu, “Climate Change, Human Rights and Forced Migration: Implications for International Law”, *Wisconsin International Law Journal*, No. 27 (2009): 607.

²⁹⁵ *Ibidem*, *supra* footnote 273.

²⁹⁶ *Ibidem*, *supra* footnote 248, at 71.

²⁹⁷ *Nicaragua v. United States of America*, International Court of Justice, “Case Concerning Military and Paramilitary Activities in and against Nicaragua”, Merits: I.C.J. General List No. 70 (27 June, 1986 1986).

²⁹⁸ *Ibidem*, *supra* footnote 296.

Soft law instruments have strong downfalls but outstanding contribution potential for the topic of climate change migration. One thing that seems to blame soft law instruments is the fact that several non-binding mechanisms have been developed in the international governance of climate migration. As a result, it can be speculated that part of the inadequate and insufficient protection that climate migrants have is owed to the incapability of existent soft law instruments.

Chapter IV. Charting the Course: A Proposal for a Multi-track Approach to Climate Migration

After analyzing the main genres of proposals regarding the protection of climate migration, it can be drawn a significant legal gap to be filled, not only from a regulatory aspect but also from a strategic governance point of view. Most proposals are quick at developing minacious frameworks from all approaches but care less about performing an in-depth study about the climate migration scope, its reality, and its points of urgency. There is a gathering of literature proposals that promise the world and offer constructive and traditional answers without explaining their feasibility, purpose in time, and prioritization of essential elements.

One fundamental error in the literature has been the immense repetition of developing international treaties. Although a multilateral agreement has the advantage of encompassing a needed dynamic answer, as McAdam points out, the amount of effort and resources concentrated in the creation and application of an international treaty misfocuses the debate from other approaches to climate migration.²⁹⁹ As affirmed by Fisher et al., “the international treaty process is seen as the ultimate panacea.”³⁰⁰ An over-exploitation of the ratification of a multilateral agreement can be counterproductive to regulatory alterations that compose global efforts at local, national, and regional levels.

²⁹⁹ *Ibidem*, *supra* footnote 269, at 42.

³⁰⁰ Elizabeth Fisher, et al., “The Legally Disruptive Nature of Climate Change”, *Modern Law Review* 80, No. 2 (2017): 173-201.

These sub-mechanisms will not eliminate the advancement of international law and should not be dependent on or waiting for an international treaty to be developed. Barnett endorses that the international treaty-making process for climate migration constitutes a paradox, engendering inaction and transmitting that the solution is achieved once the international agreement is signed. This misconception can excuse state inaction until a far more realistic idea is designed.³⁰¹ Therefore, the solution does not have to be an international agreement. It is important to search through regional and soft law approaches towards problem-solving, organization, and coordination skills that could grant better and more adequate protection toward climate migrants.

At the same time, approaches also present an elementary flaw: most scholars offer a standardised, solution to climate migration. McAdam warns that “there is a risk that a one-size-fits-all response could downplay the cultural and livelihood needs of displaced communities and local knowledge bases for adaptation.”³⁰² Much beyond “traditional” international law can fulfil the lack of protection of climate migration. The solution for climate migration needs to be holistic, transversal, and coordinated, one that involves governments and international organizations through a multidisciplinary approach, absorbing principles for several international sub-disciplines: human rights, refugee, migrant, and environmental law. As McAdam notes that, for example, a multilateral agreement is an element that composes the “number of mechanisms that may respond to climate-induced displacement, rather as the solution”.³⁰³ Identically, Kolmannskog and Trebbi suggest a “multi-track” strategy (...), in which the regional answer is part of a bigger scheme and believe that the multi-approach should be accompanied by highlighting the “best practices from different countries and regions.”³⁰⁴ Similarly, Betts indicates that soft law guidelines with international reach should complement a multilateral agreement on climate migration.³⁰⁵

In summary, it needs to be recognized that a mere multilateral agreement or a “one size fits all” approach is not suitable to resolve the normative gaps for climate migration in

³⁰¹ Jon Barnett, video, “Innovation, Energy and Climate Change in the Developing World Panel Discussion”, *YOUTUBE*, (Speech at the Deakin Lectures, Melbourne, June 10, 2010).

³⁰² *Ibidem*, *supra* footnote 175, at 7.

³⁰³ *Ibidem*, *supra* footnote 175, at 8.

³⁰⁴ *Ibidem*, *supra* footnote 288.

³⁰⁵ *Ibidem*, *supra* footnote 240 at 233–34.

international law. Climate migration is a multi-dimensional phenomenon, and a practical and comprehensive approach needs to distinguish the advantages and times to appraise what has been possible, what is necessary, and what would be desirable.

1. What has been Possible: Soft Law Instruments

At the beginning of this piece, it was analyzed the global governance efforts toward developing protection mechanisms for climate migrants. This analysis demonstrated that soft law regimes are the most developed approach. As known, the ratification of binding agreements takes time and patience, but in the meantime, responses were needed.

Soft law instruments have accomplished a tremendously relevant task of highlighting the human face of climate change, helping to characterize the climacteric effects interconnected with human mobility, incentivizing debates, prompting political will, and sketching the first lines in regulating climate migration and protecting climate migrants. As an example, the Nansen Initiative has developed a solid institutional basis, creating guiding principles, and the Cartagena Convention has infiltrated into the domestic regulations of countries from Central to South America.³⁰⁶

The legal and political circumstances have shown that soft law instruments are the only capable international-encompassing solutions until now. Nevertheless, although authors recognize the positive effects of soft law arrangements, they reaffirm that a soft law approach is only a temporary mechanism. For example, Deng stated that the GPID were just a mere beginning of a long path since they did not necessarily provide protection and assistance to internally displaced people.³⁰⁷

There have been fifty years since the international community woke up to the idea of people moving due to climate change, and there has been more than a decade since the

³⁰⁶ *Ibidem*, *supra* footnote 121, at 5–6.

³⁰⁷ Francis Deng, *UN Doc. E/CN.4/ 1993/35*: paragraph 79, (1993).

first soft law mechanism regarding climate-induced movements was adopted. The soft law task seems to have been fulfilled, and the present urges for more robust and affirmative action. Albeit nothing should hinder the international community from developing other soft law instruments in emerging topics in climate migration. An example is the recent valuable Guiding Principles for Children on the Move in the Context of Climate Change, which has provided new essential data and regulatory guidance on safeguarding the rights and well-being of children moving due to climate change impacts.³⁰⁸

2. What is Necessary: A Reactive Regional Approach Through Free Movement Agreements

The understanding that the soft law era has ended permits moving forward into the next phase, according to the prioritizations that climate migration sets. Reviewing the scientific studies about climate migration, there can be pinpointed two contents that deserve our preoccupation: the protection of people who move internally due to climate change effects, which are, as of now, the pattern, and safety of SIDS citizens compelled to move due to the risk of disappearance of their islands. McAdam shares that while a multilateral agreement is essential, it is proportionally relevant to comprehend what kind of issue climate change is and that other relevant steps can be taken from the national and regional points of view.³⁰⁹ Only with that awareness long-term answers for climate change migration can be led.

Kittel articulates that any climate migration solution needs to contain regional or bilateral treaties that enable citizens from SIDS to move to another nation, even if it is in mass.³¹⁰ Regional agreements detain more liberty and flexibility for climate migrants, including options where migrants can leave cultural identity untouched. Regional mechanisms can be built through formed regional groups with a common agenda on other

³⁰⁸ Global Compact for Safe, Orderly and Regular Migration, UN General Assembly Resolution 73/195, annex, T21 (2018).

³⁰⁹ *Ibidem*, *supra* footnote 108.

³¹⁰ Jacquelynn Kittel, "The Global "Disappearing Act: How Island States Can Maintain Statehood in the Face of Disappearing Territory", *Michigan State Law Review*, (2015).

symbiotic challenges. There is a regional asset for the collection of specific challenges that areas face regarding climate migration, allowing the creation of a regime that mirrors singular regional abilities.³¹¹ Kolmannskog and Trebbi emphasize the potential that a regional approach has in implementing adaptive measures exemplified by the relocation of displaced individuals in the Asia-Pacific zone.³¹² Therefrom, the most competent way to protect climate migrants would be to incorporate the urgent issues through regional agreements. So, what is necessary is to impose a regional response for these more immediate challenges.³¹³

From a strategic lens, this regional approach should be reactive. The answer should prompt regional action where there is a bigger infliction of climate change effects and persistent vulnerability to develop regional accords and establish and fortify assistance mechanisms. In addition, a regional proposal should strike internally displaced people and SIDS citizens protection. Internal displacement has been attributed to a challenge of domestic preoccupation. As a result, countries have been alone in trying to manage this issue as they can. This liberty has created an unjust disparity regarding protecting IDPs from climate change. Simultaneously, SIDS citizens are on the verge of becoming stateless and rightless. Rudimentary solutions have been proposed and implemented, such as “*en mass relocation*”³¹⁴, composting systems³¹⁵, the acquiring of land, or the creation of artificial islands³¹⁶, construction of sea walls³¹⁷, artificial accretion³¹⁸. All of these seem to steer clear of confronting rights-based solutions, the only one that can provide the rights of protection for climate migrants from SIDS.

³¹¹ *Ibidem, supra* footnote 275, at 518-521

³¹² *Ibidem, supra* footnote 288, at 722.

³¹³ *Ibidem, supra* footnote 300, at 88.

³¹⁴ Alexander Gillespie and William Burns, *Climate Change in the South Pacific: Impacts and Responses in Australia, New Zealand and Small Island States*, (Springer Dordrecht, 2006): 267.

³¹⁵ Colette Mortreux and Jon Barnett. “Climate change, migration and adaptation in Funafuti, Tuvalu.”, *Global Environmental Change*, No. 19 (2009): 105–112.

³¹⁶ *Ibidem, supra* footnote 286.

³¹⁷ Derek Wong, “Sovereignty Sunk? The Position of 'Sinking States' at International Law”, *Melbourne Journal of International Law* 14, No. 2 (2013): 383.

³¹⁸ Robert Jennings and Arthur Watts, *Oppenheims' s International Law* 1, Introduction and Part 1, (Harlow, Longman, 1992): 696–697.

a) Climate Free Movement Agreement

One underexplored possibility within regional agreements about climate migration is Free Movement Agreements (FMA). FMA are “provisions within (sub-) regional economic integration schemes that liberalize migration restrictions between participating member states.”³¹⁹ The agreements go from facilitating the visa requirements to more just rights to employment and residence and can be extended to migrant workers, students, businessmen, and refugees.

Further, some FMAs have surpassed the original conception and have created true regional citizenship, where nation-states agree to limit their right to exclude through regional agreements.³²⁰ FMAs have a framework capable of operating nation-state humanitarian protection standards, there is no scholarly literature that scrutinizes the potential of FMAs impact in tackling climate-induced migration.³²¹ The extensive scope of structural management has a solid and individual resilience attached to it. There is also economic resilience created by the FMAs, which is also beneficial for economic migrants due to climate change.³²² FMAs admit different movement phases: before, after, or during a sudden or occurring event that covers a panoply of situations where climate change displacement can occur.³²³ FMAs could oust the legal barriers in international law, such as proving that the displacement was due to climate change-caused events.³²⁴ There would be the need to redesign access to economic, social, and political rights, still a recognition that would be more facilitated at a regional rather than international scale. The agreements should have four main principles: protect and assist, respect human rights, take positive action, and cooperate. Implementing FMA could serve as the perfect guarantee of the protection and future of SIDS citizens.

³¹⁹ Vincent Chetail, *The Transnational Movement of Persons under General International Law - Mapping the Customary Law Foundations of International Migration Law*, in Research Handbook on International Law and Migration 1, No. 35 (Vincent Chetail & Céline Bauloz., 2014): 33.

³²⁰ For example, MERCOSUR—is a common market elaborated by the Treaty of Asunción between Brazil, Argentina, Uruguay, and Paraguay—has expanded to englobe other nations, and now has the objective to “promote channels for social participation as a keyway of strengthening regional integration.”

³²¹ *Ibidem*, *supra* footnote 275, at 135.

³²² Jon Barnett and Michael Webber, “Accommodating Migration to Promote Adaptation to Climate Change”, *Policy Research Working Paper*, No. 5270 (2010): 6.

³²³ *Ibidem*, *supra* footnote 184.

³²⁴ Tamara Wood, *The Role of Free Movement of Persons Agreements in Addressing Disaster Displacement: A Study of Africa*, (Platform on Disaster Displacement, 2019): 27.

Nevertheless, accompanying the already fueling innovative character of FMAs, the proposal could also prompt the creation of a Regional Alliance (Climate Migration Regional Alliance) within all the regional agreements to establish rules on common parameters to regulate internal displacement. There have been several identifiable gaps in the internal protection of climate migrants: many nations have difficulty constructing adequate partnerships and coordinated answers, linking governments, international actors, and civil society, mainly on durable and long-term responses, data, and analysis on the topic and addressing protracted displacement and upholding long-term answers, the participation of IDPs in the answer construction process.

It is difficult to discover ways to find political will between state authorities at all degrees to respond to internal displacement. In Niger, the main problem in developing internal displacement regulation was the engagement of the key actors to guarantee multi-sector transversality in the law at local and national dimensions. Ethiopian, Somalian, and Sudan governments encountered coordination barriers along ministries and at sub-national degrees because of the distinct approaches and comprehensions on engaging durable responses for IDPs.³²⁵ In this vein, regional agreements should develop a discussion to fixate government leadership and concrete roles and duties through the entire governmental structure, which could be a representative of our regional supervision scheme.³²⁶ Another way where regional agreements could be instrumental relates to measures for regional evacuation planning and tracking mechanisms for climate migrants after a natural hazard. A volcano eruption in Mount Merapi, Indonesia, reached 300 villages. Communities more than 10km away were less ready and verified more deaths, mainly due to the lack of evacuation planning.³²⁷ It took three weeks to localize people scattered and separated due to the absence of a national tracking system of IDPs. This flaw would demand the development of an appropriate common regional data to report responses and provide monitoring. In Somalia, insufficient governmental awareness of

³²⁵ Hannah Chapuisat, *Working Together Better to Prevent, Address and Find Durable Solutions to Internal Displacement*, (2020): 182.

³²⁶ *Idem supra* footnote, at 30-31.

³²⁷ Delphine Grancher, et alt. "Crisis Management During the 2010 Eruption of Merapi Volcano", *Proceedings of the Regional Geographic Conference - International Geographical Union*, (2011): 14.

population data made the country unable to develop a comprehensive baseline to monitor the needs of IDPs.³²⁸

Moreover, although regional agreements should contemplate a congruent response, attending to the micro-specificities of IDPs in their nations, states should engage in consultations and discussions with the victims, especially listening to vulnerable groups within climate migration. One of the problems identified in this manner was establishing a trust and confidence-based relationship for the consultation process. In Mongolia, preventive measures regarding environmental displacement are complex. Nomadic herders have been severely impacted in their livelihood by climate change, together with the loss of pasture for grazing.³²⁹ Particularly, herders have a hard time preparing for repetitive “dzuds”, a frequent natural phenomenon in Central and East Asia, which is the result of summer droughts followed by severe winter temperatures, together with harsh snowfall and intense winds. Most herders have left the countryside and moved to poor, informal suburban tent settlements. In Fiji, community engagement in creating the Planned Relocation Guidelines was complicated by the dispersion of the villages within remote islands, with little to no telephone and electricity networks.³³⁰ There should also be a preoccupation on guaranteeing social and political rights to climate migrants within borders, particularly livelihoods, housing, land and property, and social cohesion. There is a perennial problem of constructing long-term employment opportunities and hosting community members in between continued insecurity.³³¹ In 2019, Ukraine half of the IDPs were not capable of exercising their right to vote in local elections because they did not fulfil the residency requirements in the law.³³²

³²⁸ *Idem supra* footnote 325, at 164.

³²⁹ Simon Shoening, “Lessons from Internal Climate Migration in Mongolia”, *Forced Migration Review* No. 22 (2020).

³³⁰ *Idem supra* footnote 325, at 94.

³³¹ Sue Emmott, *Support Afghanistan Livelihoods and Mobility (SALAM) Mid-Term Evaluation Report*, No.14, (UN Development Programme, 2018).

³³² IOM Protection Cluster Ukraine, *Voting Rights of Internally Displaced Persons in Ukraine*, in *National Monitoring System Report on the Situation of Internally Displaced Person*, No.15 (IOM, 2019).

b) The Principle of Common but Differentiated Responsibilities Regarding the Funding Aspect

The world is not at the same level of preparedness for adapting and mitigating climate change (developing countries) and protecting climate migrants (developed countries). As argued by different scholars, there is a solid moral basis for developed nations to have the duty to correct their wrongs and assist developing nations.³³³ Moreover, as stated previously, the nations that contribute less toward climate change are and will be the most affected countries by its effects, not only from a territorial point of view but also because GHG emission in the past is connected mainly to developed countries, often more financially equipped to face climate migration. Therefore, there should be global fairness in the distribution of responsibilities concerning the direct action of countries toward climate change.

A particular problem felt by nations has been channelling sufficient financial resources. SIDS do not have the economic ability to risk greater or richer solutions to revert climate change effects that have a great deal of complexity, such as water desalinization.³³⁴ Simultaneously, internal movement management might be the initial step to deal with climate change migration. Still, the developing community might not have the funding to do so, which is equivalent to demanding the involvement of international financing for sustain internal programs.³³⁵

Although a specific international fund for climate migration is nonexistent, there are hypotheses already established that could channel efforts into becoming the appropriate funding mechanism.³³⁶ This has been the motto to implement the principle of common but differentiated responsibilities.³³⁷ As stated before, the maximum of common but differentiated responsibilities calls for the ones contributing more to climate change, to burden with its consequences.

³³³ Thomas Nagel, "The Problem of Global Justice", *Philosophy & Public Affairs* 33, No. 2 (2005): 113.

³³⁴ IPCC, *Special Report of 2012*, (IPCC, 2012): 513.

³³⁵ *Ibidem supra* footnote 59, at 102-105.

³³⁶ Asian Development Bank, *Addressing Climate Change in Asia and South Pacific*, IX, (2012): 67-70.

³³⁷ UN, United Nations Framework Convention on Climate Change, TREATY Doc. 102-38, art. 4.4, (1992).

Therefore, it is argued that the Regional Alliance should rightfully implement the principle of common but differentiated responsibilities by conducting a strategy that would materialize justice and seriousness. There should be the assessment of the financial capacity of countries and discover nations that profited the most with the emissions of GHG to develop a list of proportionate contributions. Nevertheless, this careful mathematics should contemplate the fact there has been a growing number of GHG emissions by developing nations. Today, 63% of GHG emissions are from developing nations.³³⁸ Therefore, the assessment of climate change contributors should consider that these poorer nations, although contemplating more significant emissions, were unconsciously embedded in a development scheme created by developed countries, where basic infrastructures, economic growth, and cheaper mechanisms and raw materials are dependent on GHG emission procedures. For that reason, the context of GHG emissions should also be meticulously assessed, a mix of the remaining factors.

Considering the functioning of the past commitments, the international community, would better accept a materialization of the common but differentiated principle in two stages. The first stage would happen within the regional approach, through the effectivization of the principle regarding the funding for regional mechanisms to face climate migration. Creating a climate Regional Alliance would also serve a formal materialization to attract and push the international community to financial act. The developed Regional Alliance would attract this first distanced call for responsibilities. Demanding state nations only to provide monetary contributions to the protection of climate migrants could enhance and motivate international participation, as it would not push a rights contemplation approach regarding the specific safeguards of climate migrants. In this first stage, it is much more likely that state nations would be willing to admit their fault and argue that they would compensate for international wrongdoing that had consequences on countries with less economic power. Also, the regional instrument could contend that a financial contribution to this problem through this scheme could, in the long term, be an escape from the burning of financial help on humanitarian emergencies that might pose. The international community has provided positive signs of

³³⁸ Jonah Busch, *Climate Change and Development in Three Charts*, (Center for Global Development, 2015).

such financial responsibility. For instance, in 2010, in Cancun, the Green Climate Fund was created to assist in the adaptation and mitigation of climate change in countries in development, which involved an agreement from developed countries of 100 billion per year.³³⁹

3. What Would be Desirable: A Preventive Climate Migration Convention

Proposals on international treaties on climate migration have garnered immense preoccupation for the protection of climate migrants.³⁴⁰ Although the creation of a new multilateral agreement would be an excellent technique for protecting climate migrants internationally, it is not conspicuous that it is a prudent contribution given the circumstances. The conjecture certainly is not appealing toward an agreement. Given the historical unwillingness of crucial countries to accept reduction targets of greenhouse gases, it is hard to imagine that governments would revise their attitude toward ratifying a new binding treaty. For that reason, developing a multilateral agreement on climate migration is confined to the last step of international protection, composing what would be desirable in the future. As Birriel puts it, “the ideal scenario would be the formulation of a specific binding international treaty on the rights and obligations of environmentally displaced persons.”³⁴¹ In an equal vein, the UN Secretary-General’s Report on Climate Change and Displacement stressed that “[m]ultilateral comprehensive agreements would

³³⁹ Lorrae van Kerkhoff et al., “Designing the Green Climate Fund: How to Spend \$100 Billion Sensibly”, *Environment: Science and Policy for Sustainable Development*, (2011).

³⁴⁰ *Ibidem supra* footnote 269, at 42.

³⁴¹ Thais Birriel, “Climate change, environmentally displaced persons and post sovereignty: an assessment of normative gaps and potential solutions in international law”, *College of Liberal Arts & Social Sciences Theses and Dissertations*, (2019): 61.

be the ideal preventive mechanism, providing where, and on what legal basis, affected populations would be permitted to move, as well as their status.”³⁴²

Since the international community has been intrinsically engaged, it would be easier to take the step slowly but surely from regional mechanisms to absolute global action. This would be the natural step to take, not only because our multitrack approach is intended to attract international engagement slowly and effectively, but also because, unfortunately, as future climate change numbers point, the international community will not have another option than to act. Otherwise, there will be a humanitarian catastrophe of unseen proportions. Political will will suddenly become a have-to.³⁴³

This proposed approach suggests that an international climate migration treaty should focus on two aspects. In the present circumstances, the most needed thing is to construct policies that allow people to remain in their homes whenever possible and to orderly allocate climate migrants in other nations.³⁴⁴ As described in the first chapter, many climate migrants perform a circular trajectory, returning to where they left from. Moreover, citizens have revealed resistance toward solutions contemplating only external displacement.³⁴⁵ Contrary to the previous reactive phase, the most significant part of the multilateral agreement would be of a preventive character. Therefore, a climate migration agreement should contemplate a long-term framework for the motives and reasons behind climate migration and its poor coping strategies. This multilateral agreement would focus on methodic strategies to eradicate climate change-induced migration and climate change.

An anticipated framework would demand high levels of compromise and strategic planning and coordination. Accordingly, the international community should designate a coordination facility. This facility should encompass calculated and preventive migration through the distribution of quotas for climate migrants and funding through the principle of common but differentiated responsibilities on a planned relocation scheme.

³⁴² UN, *Secretary-General, Climate Change, and Its Possible Security Implications: Rep. of the Secretary-General*, U.N. Doc. A/64/350. (2009): 20.

³⁴³ *Ibidem*, *supra* footnote 15.

³⁴⁴ Alexander Zahar, Mediated versus Cumulative Environmental Damage and the International Law Association’s Legal Principles on Climate Change, *Climate Law* 4, No. 217 (2014): 22.

³⁴⁵ Carol Farbotko, “Anti-displacement mobilities and re-emplacements: alternative climate mobilities in Funafala”, *Journal of Ethnic and Migration Studies* 48, No. 14 (2022): 3380-3396.

**c) United Nations Framework Convention on Climate Change - Climate Migration
Coordination Facility**

The consequences of climate movements demand a coordinated response from “States, UN agencies, international and international governmental bodies (...)”³⁴⁶. To conduct this objective, and similarly to the remaining conventions, a multilateral agreement would demand a search for a coordination facility. Our coordination facility does not need to wait for a disaster to happen or for the level of the sea to rise, and it should dynamically strengthen communities where there is a high probability of being inflicted by climate change consequences through the improvement of resistance, coping methodology and planned climate migration responses to create an impediment to a situation where a mass percentage of populational all move at once.³⁴⁷

Although, as seen, proposals for climate migration inscribe the creation of a new coordination institution, it would be more beneficial to engage an already existing body. Within the international community, the UN is holder of greatest potential for the task of managing the International Convention for Climate Migration.

Created by the Conference of the Parties, the UN Framework Convention on Climate Change (UNFCCC) is the principal international legal text proposing to fight climate change, being a pre-established space for future agreement signatures.

Treaty law is the mechanism that concedes their mandate to the UNFCCC.³⁴⁸ Authorities have discredited the UNFCCC processes in dealing with climate migration, attributed mainly to the failure of the institution in the emission reduction aspect. Moreover, the authors have pointed out that the Framework Convention did not predict human rights problems and topics of this nature in its scope. In the words of Docherty and Giannini, the “UNFCCC primarily concerns state-to-state relations; it does not discuss duties that states have to individuals or communities, such as those laid out in human rights or refugee law”³⁴⁹.

³⁴⁶ Chiara Scissa, “Recognition and Protection of Environmental Migrants in International Law”, *E-International Relations*, (2021).

³⁴⁷ *Ibidem*, *supra* footnote 160 at 204–15.

³⁴⁸ *Ibidem*, *supra* note 337.

³⁴⁹ Chapter 3 of this piece, section 3.1.

Nonetheless, the UNFCCC presents the best alternative within the institutional mechanisms of the UN to face climate migration through the Climate Migration Coordination Facility. The UNFCCC detains similar democratic involvement as the UN General Assembly but with a core focus on climate change. The UNFCCC is the primordial instrument for confronting climate change, operating as the only framework convention where climate agreements are localized. Moreover, the authors also pointed out that the institution is characterized by a historical action more related to preventive approaches. By pushing human mobility as an aspect connected to climate change, the institution detains a significant capital at an institutional level that would be essential in the negation period.³⁵⁰ The integration of displacement in the institutional debate of the UNFCCC could turn it into the home of discussion of climate-related challenges, giving greater flexibility in negotiations.³⁵¹ Last place, although the UNFCCC has never focused on human rights problems, the institution has started to address them. In 2015, at COP 21, the UNFCCC approved the Loss and Damage regime regarding climate impacts. This fact indicates that the international community is starting to walk in a better direction, which can turn the discourse to climate migration.³⁵² Therefore, the UNFCCC would be the desirable coordination mechanism for our Multilateral Agreement on Climate Migration.

d) The Principle of Common but Differentiated Responsibilities Regarding the Allocation Aspect

Planned relocation, is a form of preventive response of a temporary nature to support populations impacted by climate change to “move away from dangerous areas in advance

³⁵⁰ The UNFCCC has managed twenty-one conferences with global leaders, which have culminated in various multilateral treaties. Eg. *Ibidem, supra note 125 and 255*; Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts, UN Framework Convention on Climate Change (2013).

³⁵¹ This succeeded in the Paris Agreement negotiations, where SIDS called for a one-and-a-half-degree target in exchange for concessions on Loss and Damage.

³⁵² *Ibidem, supra note 122 and 227.*

of anticipated disasters or long-term environmental degradation.”³⁵³ While the UNFCCC would have to coordinate a complex task on the internal preservation of people and their homes against climate change hazards, the institution should meticulously follow the second stage of the strategic path for the principle of common but differentiated responsibilities.

This pillar of the final step would be the second half of applying the UNFCCC principle of common but differentiated responsibilities.³⁵⁴ The multilateral agreement should create a Climate Change Based Immigration Visa Program that could “allocate the number of immigration visas that each country and extend it in proportion to the percentage of greenhouse-gas emissions that countries produce”³⁵⁵. The agreement should also involve a careful agreement on appropriate and just receiving measures, attending to the dimension and capacity of each party.³⁵⁶ The specifics regarding global inequalities and intrinsic characteristics should always be guaranteed.

Nevertheless, differently from the application to the funding aspect, allocating migrants according to the principle of common but differentiated responsibilities would have to respect additional elements. Migration allocation should be performed after carefully analyzing the financial capability and human rights protection level in the sed country. Also, balancing autonomy and cultural integrity within climate migration is crucial to providing a just solution. It is fair that people who move should have a word about the place of their relocation, preserving their cultural integrity³⁵⁷, and principle of self-determination, a structural basis for international law, consecrated in the ICCPR.³⁵⁸

In summary, the proportional allocation of migrants should concern the conditions in hosting countries and be preoccupied with the moral and values within the willingness of climate migrants to move or not.

³⁵³ Davor Vidas, et al., *International Law and Sea Level Rise: Report of the International Law Association Committee on International Law and Sea Level Rise*, (Leiden: Brill, 2018): 20–27.

³⁵⁴ *Ibidem*, *supra* note 44, Vol. I.

³⁵⁵ Kara Moberg, “Extending Refugee Definitions to Cover Environmentally Displaced Persons Displaces Necessary Protections”, *Iowa Law Review* 94 No. 1107 (2009): 1135–36.

³⁵⁶ *Ibidem*, *supra* note 126, at 351.

³⁵⁷ *Ibidem*, *supra* footnote 241, at 16–17.

³⁵⁸ *Ibidem*, *supra* footnote 98.

Conclusion

After discussing about the existing gap on the topic of climate change-induced movements and the lack of sufficient protection under international law, there are some final considerations that can be made.

Climate change fuels the already complex nature of migration genres, making it a sensitive and challenging assessed movement. Climate-induced mobility is a dynamic coping mechanism, collecting all kinds of trajectories: external and internal, voluntary and forced, temporary or permanent. This ambivalent nature pinpoints four main concerns: the refusal of refugee applications, the violation of human rights, the unorganized internal mobility, and the worrying situation of SIDS and its citizens due to rising sea levels.

When put to test, international law fails to provide adequate and effective protection to people displaced in the context of climate change, and specifically to the mentioned issues. This global flaw makes us realize that an option must be proposed and understand what are the legal gaps and weaknesses that are responsible for clear, urgent protection. There were two major legal gaps: the nomenclature dissent and the proliferation of one-size-fits-all proposals for the complex form of mobility that displacement in the context of climate change offers.

To start constructing an appropriate answer, it is decisive to delimit the scope of the subject and object of this dissertation. After carefully analyzing the several nomenclature options: refugee, migrant, and displaced, this thesis argues that the IOM definition of *climate change migrants* seems to be the most accurate definition that acknowledges the complexity and vulnerability of people who are displaced by climate change.

Having this conceptual basis to define the scope and necessities of the subjects intended to protect; the remaining part of the thesis searched within the possible paths to fill this climate migration gap. As discussed in this piece, there are three central answers: creating a multilateral agreement; bridging multilateral agreements; and using soft law as a transformative power tool. Despite the critical intricacies, both positive and negative, that surround all these approaches, all techniques reveal common mistakes according to this author. Scholars and experts are more preoccupied

with creating and developing fresh proposals instead of strategically looking around and analyzing what has been worked on and the existing institutions that can manage climate migration protection. This has resulted in a panoply of similar proposed paths. Another permanent negligence of the literature is the disregard for a strategic climate governance stand, mainly a time-lapse futuristic view or prioritization of topics, especially because authors need to analyze climate migration through a holistic point of view.

This piece concludes that the most adequate path for providing a feasible and correct protection for climate migrants and for the regulation of climate migration is a multitrack approach through an tripartite assessment based on: what has been possible to understand in terms of what kind of international protection exists and if proposals should invest in prolonging it; what is actually necessary, though a listing of priority topics and emergency needs for action; and finally, what would be desirable, regarding what would be the most effective and robust international protection mechanisms to protect climate migrants.

The thesis concluded that the respective answers to the above questions were the following ones. Soft law instruments were significant in several domains and served to structure the foundations for a climate migration protection path. Nevertheless, non-binding agreements are temporary and that expiring date is due. For this reason, soft law instruments are considered within “what has been possible” so far. Focusing on the present, the thesis argues that it is necessary to create a regional approach with reactive character through the signature of Free Movement Agreements, focusing on regulating internal displacement caused by climate change and protecting citizens from small island developing states. Creating a Regional Alliance would engage the international community by financially contributing to GHG emissions. Finally, in the future, it would be desirable to develop an international agreement of a preventive and long-term nature to care for the permanence of people impacted by climate change in their homes and nations and simultaneously perform a planned international relocation in cases where that would not be possible. It is suggested that the UNFCCC could manage this strategy, and allocation quotas would finalize the global community engagement through the principle of common but differentiated responsibilities to conduce to climate justice effectively.

As for the future, it would be beneficial that policies would respect the principle of common but differentiated responsibilities and realize that climate migration demands a holistic approach. In this sense, pragmatism and feasibility should be the guiding principles of theoretical experts and scholars. Another element that should never leave the minds of path creators is that climate migration is caused by a previous global challenge, climate change, and, thus contemplating an answer for a consequence but not addressing the problem will lead to a vicious circle of violations of human dignity and enhancing human vulnerability. Time is running out for the community to effectively and timely act. However, there is still a small window of opportunity for humanity to prepare and avoid for what would be the most significant humanitarian challenge in our drowning horizon.

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