

Doctoral (PhD) dissertation

Valéria Eszter Horváth

2023. május 8.

UNIVERSITY OF PUBLIC SERVICE
Doctoral School of Public Administration Sciences

Valéria Eszter Horváth

**Regularising Climate Change Induced Human Mobility:
A systematic review of the international law on human mobility
and the challenges posed by climate change and environmental
deterioration**

Doctoral (PhD) dissertation

Supervisor:

Balázs Vizi

signature

.....

Budapest, 8 May, 2023

TABLE OF CONTENTS

INTRODUCTION.....	4
CHAPTER 1: PROBLEM DEFINITION AND SCOPE	9
CHAPTER 2: THE CURRENT MANAGEMENT OF ENVIRONMENTALLY INDUCED HUMAN MOBILITY	35
CHAPTER 3: EXPLAINING ENVIRONMENTALLY INDUCED HUMAN MOBILITY.....	63
CHAPTER 4. OBSERVING CERTAIN ASPECTS OF ENVIRONMENTALLY INDUCED HUMAN MOBILITY UNDER RELEVANT AREAS OF INTERNATIONAL LAW	100
CHAPTER 5: THE INTERNATIONAL LEGAL FRAMEWORK ON HUMAN MOBILITY AND ITS LEGAL GAPS CONCERNING ENVIRONMENTALLY INDUCED HUMAN MOBILITY	145
CHAPTER 6: RECOMMENDATIONS	Hiba! A könyvjelző nem létezik.
CONCLUSIONS	203
BIBLIOGRAPHIC REFERENCE	204

INTRODUCTION

As the public and political discourse on climate change gains momentum, and slowly but surely creates consensus among members of the international community to act, the issue of „climate refugees” during the actual decision-making processes appears only sporadically. It is often viewed as a media hype rather than an actual social issue to be resolved, and thus treated as a PR-stunt during the most prestigious climate summits. Legal practitioners and international scholars deal with „climate refugees” within the international law context to the extent that they establish that it is a misleading term, and that persons of concern most probably do not qualify for international protection, in its classic interpretation.

Meanwhile anthropogenic environmental deterioration is on the rise (such as pollution, man-caused natural disasters, depletion of natural resources and biodiversity, climate change). Additionally, displacement and migration related to environmental factors are on the rise as well. In particular climate change induced mobility is expected to rise. Currently, this expected human mobility related to environmental factors can only be qualified ‘irregular migration’ as the relevant international law is limited and national legislations are inadequate if they exist at all. Environmentally displaced persons are currently without protection and unless addressed millions will be forced into irregular status. Climate change is happening, migration is happening, international law must follow suit.

Nevertheless, environmentally induced human mobility is not a new phenomenon. Some of the most historic examples of environmentally induced human mobility include: (i) moving due to drought from Mesopotamia to Europe between 50 000 and 40 000 BC, to Southern Mesopotamia around 4000 BC, contributing to the fall of the Akkadian Empire even around 2200 BC and the decline of the Anasazi settlements from 1150 to 1350 AD, (ii) moving due to glaciation through the Bering Strait between 25 000 to 20 000 BC, causing the Huns’ invasion around 400 AD or the collapse of Norse settlements in Greenland from 1400 to 1500 AD. One of the first examples of human-made environmental degradation as a cause for human mobility are the migration waves in Central Europe from 300 to 500 AD weakening the Roman Empire, and the decline of the Mayan Civilization from 800 to 900 AD associated with the collapse of agricultural productivity, wars and famines. In terms of natural disasters, one of the most prominent example, is the 1755 Lisbon earthquake displaced tens of thousands of people, and even killed a quarter of the city’s population. Another historic example was the Great Irish Famine (between 1845 and 1852) caused by the potato

blight because of warmer and damper weather induced the emigration of 2 million people from Ireland and the death of one million people, reducing the local population by 20-25%.¹

In general, international human mobility plummeted in the 1970s, with 2,2% of the population, and after a gradual rise in the 1980s, an exponential increase started from 2.3% to 2,9% in the 1990s to 3,2% today.² Main migration routes according to the UN Department of Economic and Social Affairs (UNDESA) include routes from Central America to North America, from South-East Asia and East Asia to North America, from India to the Persian Gulf, from Central Asia and the former USSR to Russia and vice versa, from North Africa, South America, North America, and the Indian subcontinent to the Schengen zone. Intraregional mobility is significant within the Schengen Zone, within East and Central Africa, within South East Asia and Pacific, within East Asia, the Indian subcontinent, with the Near East, within West Africa and within South America.³ According to IOM on average 26,4 million people are displaced by rapid-onset disasters every year. There are 763 million international migrants, there are 231 million international migrants, there are 19,5 million refugees, there are at least 10 million stateless persons.⁴

Estimating the problem [TABLE 1]

1988 (Jacobson)	10 million environmental refugees
1993 (Myers)	212 million by 2050 those at risk of becoming environmental refugees
2007 (Friends of the Earth based on Myers)	200 million by 2050
2007 (Christian Aid based on Myers)	300 million by 2050
2007 (Stern based on Myers)	150 – 200 million by 2050
2009 (Global Humanitarian Forum)	78 million displaced by 2030

Source: compilation of the author

¹ Dina Ionesco, Daria Mokhnacheva, François Gemenne: The Atlas of Environmental Migration, Routledge, 2016. p.4

² The Atlas of Environmental Migration p.8

³ The Atlas of Environmental Migration p.8

⁴ The Atlas of Environmental Migration p.9

Numbers are changing. In 2010 it was true that while Africa's population was 10% of the global population, Africa was estimated to own a quarter of the "environmentally displaced persons". At the time, Prieur suggested that 80% of the displaced were hosted by countries of the South, through intra-regional human mobility, or internal displacement.⁵ However, Scott claims that climate change induced inter-regional human mobility is just as likely. Verifying and even estimating the numbers is a challenge, as Schade points out, although the impact of climate and environmental change on the livelihoods of people seems evident. Evidence of the extent is difficult to obtain and usually anecdotal.⁶ However previously projected figures improved over time and keep improving with the improvement of climate models and the availability and access to data.

Climate change is an environmental, economic and ethical issue.⁷ It is evident that we can view climate change as an environmental problem. Also, considering finite natural resources it is a simple deduction that climate change is an economic problem. As Bodansky et al. explain many European countries view climate change as an environmental issue, while many non-European countries such as the USA view it as an economic issue, since economists play a key role in policy-making, and many developing countries understand climate change as part of „a larger pattern of historical and economic injustices”, a continuation of the 1970s debate on the new international economic order spurred from the decolonisation process. Some developing countries even claim „compensation” and argue that developed countries should settle their „ecological debts”.⁸ More recently environmental justice movements have gained momentum. Advocates and scholars call for equal allocation and access to resources and protection from unequal distribution of environmental threats, recognition of structural inequalities, relevant stakeholders and traditional knowledge and as a result the organisation of participation and representation of such entities in the climate protection space.

In this dissertation I will focus on the ethical perspectives, the issue of equity and climate justice. At the same time, one of the main challenges cited by states facing them, is the influx

⁵ Michel Prieur: Draft convention on the International Status of Environmentally-Displaced Persons, UN-FCCC, 2010 pp.1-10 p.3

⁶ Jeanette Schade: Land matters In: Dimitra Manour – Andrew Baldwin – Dug Cubie – Anja Mihr – Teresa Thorp (eds.): Climate Change, Migration and Human Rights. Routledge, 2017. p.151

⁷ Daniel Bodansky – Jutta Brunnée – Lavanya Rajamani: International Climate Change Law, Oxford, 2017. p.4

⁸ Bodansky et al. p.5

of asylum seekers, displaced persons, and 'economic migrants', especially in the form of mixed or irregular migration. So my research objectives are the following.

Firstly, it is my hypothesis that 'environmentally induced human mobility' is currently managed on an ad hoc basis by the individual, affected states. In certain instances, where the affected state is unable to manage such a crisis, the international community steps in. Therefore, I will assess case studies where environmental deterioration, may it be gradual or sudden, induced a certain type of human mobility. The cases are selected as typical examples of environmental deterioration that induce human mobility, and I will also demonstrate instances of environmental deterioration, which have not induced a scientifically significant mobility. I aim to demonstrate how affected states dealt with the mass influx of displaced persons after a natural disaster, the mass relocation of displaced persons. I will also demonstrate how the international community as a whole and through its international organisations tried to assist such crisis management and disaster relief.

Secondly, it is the purpose of this dissertation to clarify and synthesize traditional theories on migration and currently emerging concepts of human mobility. One of the obstacles in managing and regularising environmentally and/or climate change induced human mobility is the lack of relevant theoretical framework which would provide an interpretation of the examined phenomenon.

Thirdly, I will assess which aspects of environmentally induced human mobility are regulated under international law. Certain fields of international law, in particular international environmental and climate law, international humanitarian and disaster relief law, and international human rights law, already provide some guidance and direction for the way forward, however limited.

Thirdly, it is my understanding that in particular the current international legal framework on human mobility is unable to provide protection for 'environmentally displaced persons'. Thoroughly examining universal as well as regional protection mechanism and legal frameworks on human mobility, I will try to demonstrate that not only is it not (yet) a coherent and cohesive body of international law but even the current acquis on human mobility is full of legal loopholes, that allow states to dodge their international responsibilities, in addition to the inherently porous nature and enforceability of international law.

Finally, I will assess whether the international community is open to regularising climate change induced mobility (CCIM) separately, on its own merits. Taking into account the development and the current state of international law on human mobility, I will consider various scenarios where CCIM may be regularized, such as in an individual convention, or

under the UNFCCC, under refugee law or human rights law, or through ad hoc means by specialized agencies.

In terms of the methodology, at first, I will assess selected case studies to exemplify the current management of environmentally induced human mobility. I will then add a comprehensive review of the relevant literature on human mobility, classic migration theories and newly emerging human mobility concepts, as well as the deductions of the most relevant, specialized international organisations such as the International Federation of the Red Cross and red Crescent, the International Organisation for Migration, the UN High Commissioner for Refugees, the UN High Commissioner of Human Rights and the Internal Displacement Monitoring Center. I will then continue my dissertation with an analysis of the relevant fields of international law and the currently porous international legal framework on human mobility, and finally concluding with identified loopholes as potential room for development. In this dissertation, I will not try to ascertain any numbers or estimations, and I will also not try to prognose natural disasters and mass influxes.

CHAPTER 1: PROBLEM DEFINITION AND SCOPE

In this chapter, I will explain the phenomenon, what environmentally induced human mobility actually is, how and why can we distinguish environmentally and climate change induced human mobility and I set out to prove that abrupt environmental changes, as well as more gradual environmental deterioration causes human mobility. To be able to define the material and the scope of the problem, I will start by explaining some fundamental definitions without which the actual phenomenon cannot be well interpreted.

1.1.UNDERSTANDING THE EFFECTS OF CLIMATE CHANGE

To understand climate change induced human mobility and to explore the challenges of legally defining it, it is essential to explain the effects of climate change and its various components. It is therefore at this initial point of the dissertation that I would like to define the term “environment”. In environmental policy and environmental law, the term is used in its broad sense. This is reflected in the Council of Europe Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (Lugano Convention of 1993), which declares that the environment encompasses a) natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors; b) property which forms part of the cultural heritage; and c) the characteristic aspects of the landscape.⁹ For the purposes of this dissertation, I will choose an anthropocentric definition of the environment by defining the environment as the totality of the physical, chemical and biological conditions surrounding humans in a particular geographical area at a certain point in time, including man-made infrastructure.

A significant aspect of the above defined “environment”, is that the environment changes over time. This environmental change can be positive or negative, depending on the advantages and disadvantages it yields to humanity, bearing in mind that according to contemporary environmental policy, on a domestic and international level, the environment serves humanity. I already referred to this phenomenon in the previous paragraph as an anthropocentric approach, which will also define this dissertation. Assessing such changes and their consequential impacts should be formal and standard procedure, when conducting

⁹ Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (Lugano, 21.VI.1993) art 2. para 10.

environmental impact assessments concerning a certain investment or any other project impacting the environment, as required by the Lugano Convention as well. For the purposes of this paper, I will define environmental change as a fundamental or significant change in the characteristic features of the environment, whether rapid or gradual, whether linear or cumulative, but most definitely permanent or irreversible. A positive change in the environment could be referred to as environmental development, meaning that the quality of the environment from a human perspective, improves. It is quite telling that there is little evidence of colloquial or scientific term referring to such a positive change. Usually, human impact does not mean a positive change in the environment. The terms environmental degradation or environmental deterioration, which is often used interchangeably by the relevant literature and policy-makers, is a negative change in the environment. According to the United Nations Environmental Programme, environmental degradation thus includes contamination or drastic human transformation of the land, air, and water on the planet, or of the condition of outer space, which is injurious to the components of the global eco-system and sometimes in a synergistic way for the system as a whole; significant reductions in the numbers, or even extinction, of plant and animal species as well as microorganisms in the global eco-system due to drastic changes brought about by human activity or societal processes, such as excessive pollution or deforestation; erosion of the soil at such a rate that its organic layer disappears more quickly than it is replaced; its degradation through salinization/alkalinization, or its loss of fertility through depletion of nutrients or accumulation of toxic substances; and other developments which are incompatible with the goal of a sustainable society on Earth.¹⁰

As such environmental change, and more specifically, environmental degradation must be distinguished from environmental disasters. According to the International Federation of the Red Cross and Red Crescent, disasters are serious disruptions to the functioning of a community that exceed its capacity to cope using its own resources. Disasters can be caused by natural, man-made and technological hazards, as well as various factors that influence the exposure and vulnerability of a community. Natural disasters are earthquakes, landslides, volcanic eruptions, avalanches, tsunamis, floods, heat waves, cold waves, hails storms, as well as wild fires, droughts, cyclones, epidemics and pandemics, technological, chemical, biological, radiological and nuclear, hazards.¹¹ As mentioned above,

¹⁰ Untawale, M. G. (1990). Global Environmental Degradation and International Organizations. *International Political Science Review*, 11(3), 371–383 p.371

¹¹ <https://www.ifrc.org/our-work/disasters-climate-and-crises/what-disaster>

environmental deterioration may also be defined as undesired consequences of human activity such as deforestation, damages caused by industrial infrastructures, the current and anticipated effects of climate change such as water scarcity, desertification, as well as the depletion of certain non-renewable natural resources, including soil degradation.¹² For the purposes of this dissertation though, I will refer to unexpected or spontaneous negative environmental changes as disasters, and more gradual environmental deterioration as environmental degradation, while both may be naturally caused, human induced or a particular combination of the two.

Proceeding with the focal point of my research, which in particular is the climate and climate change, these fundamental notions must also be defined. The “climate” is a subsystem of our natural environment, and describes the average weather in a given area over a longer period of time. The classical period used for describing a climate is 30 years, as defined by the World Meteorological Organization.¹³ The meteorological elements of a climate, are the temperature, air pressure, wind, precipitation, etc. Just like other subsystems of the natural environment, the climate changes naturally. This is referred to by climate scientists as climate variability. Climate variability includes fluctuations (which refers to the deviation of a parameter from a core value in a given month, season or year), and oscillations, more significant and longer-term deviations within the 30 years period.¹⁴ In comparison, climate change is any systematic and irreversible change in the long-term statistics of climate variables such as temperature, precipitation, pressure, or wind sustained over several decades or longer. Climate change can be due to natural external forces such as changes in solar emission or changes in the Earth’s orbit, natural internal processes of the climate system, or it can be human induced. In fact, as I will explain climate change is also caused by a combination of natural and human induced causes.

One of the challenges of this research, and policy making overall in this subject is to define and delimit the types of natural phenomenon which should be taken into account. It is hard to distinguish those environmental changes which have no effect on the climate, and it is also impractical since these systems are interrelated.

Climate change is driven by global warming, which is fuelled by greenhouse gases, such as carbon dioxide, methane, CFC-gases, as well as water vapour. In terms of anthropogenic climate change, the most significant greenhouse gas is carbon dioxide. Methane is

¹² Bende Zsófia – Muhoray Árpád: A környezeti migráció, mint komplex kihívás. In. *Hadtudomány (Rend- és katasztrófavédelem)* 2014/3-4. p.106-115

¹³ <https://www.climateurope.eu/what-is-climate-and-climate-change/>

¹⁴ <https://www.climateurope.eu/what-is-climate-and-climate-change/>

sourced from the food industry (meat production) and CFC gases have been eliminated from dirty technologies of everyday appliances such as fridges, but have contributed significantly to the deterioration of the Ozone-layer at one point in time. Global warming has been inevitable thusfar and it hasn't even started stagnating yet. Although many other natural and artificial factors contribute to climate change in addition to global warming, the main driving force, it is necessary to mention the systemic nature of climate change on the one hand, and the positive feedback phenomena on the other. Our climate is a system in which everything is connected to everything else, and these connections are so complex that scientific debates continue even among climate scientists. And the complexity results in the need for supercomputers to calculate with a large number of variants in different climate change models – something that sounds like science fiction to the uninitiated. And the fact that forecasting climate change is so difficult unfortunately gives the sceptics enough ground to attack, which clearly hinders the development of response strategies and international cooperation. In any case, the body of knowledge and prognoses available to us are refined as the years go by, since – unfortunately – more and more empirical data are available to verify the theoretical models.¹⁵

The complexity of climate systems is further increased by the so-called positive feedback mechanisms. Global warming not only causes climate change, but climate change also promotes global warming. This means that the more intense the change in our climate, the warmer it will be. The same is the case with the warming of the seawater and the air layers above it, which, by increasing evaporation, increases the - already mentioned - humidity of the atmosphere even further.¹⁶ Climate scientists call this phenomenon a positive feedback mechanism, which makes the system and changes in our climate unpredictable. Furthermore, the latest research shows that once a feedback loop is activated, it can trigger further feedback processes. Thus, the chain reaction initiated by the indirect consequences of climate change further increases the predictability of climate change.

Already back in 1990, in its first inaugural report¹⁷, the Intergovernmental Panel on Climate Change established, if states continue „business as usual” in terms of their fossil fuel based exponential economic growth, carbon dioxide emissions alone may double by the mid-21st century. The IPCC persistently warns of a global average temperature rise of 1,5°C

¹⁵ Godrej, Dinyar: A klímaváltozás. HVG Könyvek, 2004. p.34

¹⁶ Godrej p.30

¹⁷ IPCC Working Group II: Climate Change: The IPCC Impact Assessment No. 1. (1990) 1. o. (Elérhető: https://www.ipcc.ch/site/assets/uploads/2018/03/ipcc_far_wg_ii_full_report.pdf Letöltés ideje: 2019. december 13. A továbbiakban: IPCC Impact Assessment (1990))

or even as much as 4-5°C in the 21st century. Reports continuously reference median temperatures or average temperatures, on a global scale in fact. This means that perhaps in the Tropics the median temperature will only increase with half while the median temperature of the Poles increases twice as much. This also means that the oceans' surface temperature may increase with 0,2 – 2,5°C. This global warming then also means that by 2050 sea-levels will rise with 0,3-0,5 meters on average, and with 1 meter on average by 2100.¹⁸ The complexity of global warming also well described with the issue of water vapour. Most recent studies assess that water vapour is in fact leading the list of greenhouse gases contributing to global warming. Although rapidly growing industries are not in fact producing water vapour, there is a spiral effect that the more the Earth heats up, the more water evaporates from our oceans, and thus the more water vapour there will be in our atmosphere, contributing increasingly to global warming.¹⁹ While discussions on carbon-entrapment are endless, water vapour is in fact beyond our control.

At this point, I would also like to introduce certain considerations regarding the various approaches to climate change. As mentioned above, climate change may be a result of the combination of natural changes and human impact. Put in another way, natural climate change may be exacerbated by human activity, rendering it almost impossible to establish the correlations, not denying the fact that climate change is real and happening. Moreover, climate change is not a phenomenon to be controlled or reversed by humanity. Climate is a subsystem of our natural environment, and therefore cannot be examined in isolation, and therefore the interrelated local environmental features in a particular geographical area must also be always taken into account. Furthermore, environmental disasters may also be caused by climate change. Thus, social scientists reach a stalemate resembling “the chicken or the egg” dilemma.

So, while it is important to understand these terms and the underlying phenomena, we must not get too carried away with legal definitions and should not be distracted by the search for root causes. It is beyond the scope of this dissertation, this research and the legal discipline to determine the causes of climate change, or environmental degradation for that matter. Nonetheless, the negative effects of climate change, as well as environmental deterioration, has ripple effects and consequences on various domains of human life. Analysis of such environmental phenomena should be and will be restricted to better understand the social, the individual human and legal implications of such phenomena.

¹⁸ IPCC Impact Assessment (1990) p.1

¹⁹ Godrej p.31

Throughout human history, the climate has had an impact on the development of civilizations and fundamentally determines our daily lives, the culture of our places of residence, and the economic sphere. The climatic environment has disadvantages that must be protected and advantages that can be used sensibly. In fact, some scholars²⁰ claim that the climate is in fact also one of the renewable natural resources, through the utilization of solar and wind energy for example. Without going into much more detail, it must be noted that climate change has various causes, and as such, different causes produce different types of climatic effects. As a result of global warming, extreme weather anomalies, permanent drought, desertification, or, on the contrary, frosts and heavy rains have a strong impact and cause serious environmental, economic and social changes. The ice caps of the North Pole are melting, the glaciers are disappearing at an alarming rate, the hydrological cycle is changing, the sea level is rising, there is a water shortage, and floods are making life difficult for those living near water.²¹

For the sake of theoretical analysis, the natural effects of climate change can be differentiated according to the Internal Displacement Monitoring Center²² in the following way. On the one hand, climate change has rapid on-set effects, such as cyclones and hurricanes, floods, and forest fires (also known as climate change induced environmental disasters). On the other hand, climate change has slow on-set or gradual consequences, such as sea-level rise, drought, changes in precipitation distribution, and global warming, and last but not least, adverse effects on human health (also known as climate change induced environmental degradation). Although climate change and its impacts cannot be completely separated from local environmental contexts and changes, in view of the fact that climate change in itself acts on these as a multiplier as we will see, and in my opinion it is worth considering them separately, as far as possible.

To demonstrate the complexity of the human and social implications of these natural effects of climate change, let us take the example of wildfires. First of all, plants play a key role in absorbing carbon dioxide, so forests play a key role in mitigating climate change. Additionally, the circulation period of forests is very long, which means that the forests themselves are very vulnerable to climate change.²³ In particular, global warming is more

²⁰ Láng p.244

²¹ Glied, V., & Bumberák, M. (2011). Klimavándorlás, klímaigazságosság és a globális NGO-k Afrikában. *Afrika Tanulmányok / Hungarian Journal of African Studies*, 5(3), 4–33 p.6

²² IDMC: No matter of choice: displacement in a changing climate. December 2018. 2. o.

(Elérhető: <http://www.internal-displacement.org/sites/default/files/publications/documents/20181213-slow-onset-intro.pdf> Letöltési ideje: 2019. december 13.)

²³ IPCC Impact Assessment (1990) p.2

intense in the Northern Hemisphere, so forests in the Global North will dry out more and more, making them more vulnerable and susceptible to wildfires.²⁴ Thus wildfires become, and as we have seen in recent years in Portugal and Greece, wildfires are becoming more and more frequent, which causes further significant loss of forests. Furthermore, the large scale wildfires witnessed in recent years contribute to global warming, and thus exacerbate climate change. Alarmingly, according to the World Meteorological Organization, the rate of wildfires has not been this high in the last 10,000 years.²⁵ As a result, local populations lose their property onsite, suffer physical injuries, are exposed to health hazards from the smoke, and could even lose their own lives. Additionally, they lose their potential means of climate change mitigation, exacerbating once again climate change. And although dependence on forestry varies greatly from country to country, there are some countries where it is an essential industry of the national economy, therefore the local population may lose their main source of income, and the local municipality or the country may lose its main industry.

One of the most apparent consequences of climate change are extreme weather anomalies, such as sudden storms. Because of the storms, coastal protection will entail extremely significant costs, fresh water may become contaminated and fishing can become impossible, which is essential source of income and food security in coastal areas.²⁶ In 1998, the damage caused by Hurricane Mitch raging in Honduras reached 60% of the country's annual gross national product.²⁷ The severity of weather anomalies is clearly indicated by the fact that of the 8,835 natural disasters recorded between 1970 and 2012, 3,496 occurred in the period between 2001 and 2010. Although these numbers fell after 2010, individual anomalies became even more devastating. In August 2017, for example, two category 4 hurricanes, Harvey and Irma, reached the coast of the United States of America one week apart, which has not been seen in recent centuries. The two natural disasters together caused, according to various estimates, 150 to 290 billion USD in damage. Outside of the USA, Hurricane Irma damaged or destroyed 70% of homes and buildings on the island of St Maarten as well as critical infrastructure, including water supplies, was severely damaged.²⁸ In countries such

²⁴ World Meteorological Organisation: Drought and heat exacerbate wildfires, 30 July 2018. (Elérhető: <https://public.wmo.int/en/media/news/drought-and-heat-exacerbate-wildfires> (Letöltési ideje: 2019. december 15.)); See also Lásd még Global Wildfire Information System: https://gwis.jrc.ec.europa.eu/static/gwis_current_situation/public/index.html (Letöltési ideje: 2019. december 15.)

²⁵ WMO (2018)

²⁶ IPCC Impact Assessment (1990) p.4

²⁷ In other words, this environmental disaster destroyed 50 years of work in 72 hours. Godrej p.40

²⁸ IFRC World Disaster Report (2018) (Elérhető: <https://www.ifrc.org/sites/default/files/2021-09/B-WDR-2018-EN-LR.pdf>) p.170

as Bangladesh, two-thirds of which is less than five meters above sea level and where 28% of the population lives on the coast, sea-level rise-related flooding will have serious consequences. If the sea level - by 2050 - rises by half a meter, Bangladesh will lose approx. 11% of its territory, which would directly affect the lives of 15 million people. With the loss of territory, food security and people's livelihoods will also be at risk. Along with sea level rise and floods, freshwaters are also becoming acidified, which will affect the water supply of around 33 million people.²⁹

In the short term, environmental disasters can, first of all - due to the lack of disaster prevention strategies - significantly disrupt public order, people can be injured and they may also die, and significant material damage can occur in private and public property.³⁰ According to the World Bank, in addition to human casualties and economic losses arising from environmental disasters, the costs of disaster prevention and recovery must also be added.³¹ All this means that environmental disasters can cause not only a humanitarian crisis, but also an economic crisis, putting a strain on the national budget of the affected country. Natural disasters also have long-term consequences, the destruction does not end with the washing away of residential buildings, for example. Cholera, malaria, and Dengue fever also broke out as a result of the mentioned Honduran flood.³² A cholera outbreak, such as in Peru, could cost up to a billion dollars due to a drop in tourism and seafood exports.³³ In addition to the obvious human and material losses, storms also cause a serious shock in the ecosystem in the long term. According to the World Disaster Report of 2018, between 2007 and 2017, 2 billion people were affected by environmental disasters, alone.³⁴

Apart from these rapid on-set effects of climate change, slow on-set effects are just as detrimental to individual humans and whole societies. As I have already mentioned, global warming is not only the driving force of climate change, but also one of its consequences. In recent decades, heat records have been continuously broken, both in terms of daily records,

²⁹ Environmental Justice Foundation: Climate Displacement in Bangladesh (Elérhető: <https://ejfoundation.org/reports/climate-displacement-in-bangladesh> Letöltés ideje: 2019. december 15.)

³⁰ Nevertheless, the African Union's broadened refugee definition hasn't been applied yet. Zetter, Roger: Protecting environmentally displaced people. Developing the capacity of legal and normative frameworks. In: Research Report, Refugee Studies Centre, Oxford Department of International Development, University of Oxford. February 2011.

³¹ The World Bank: Natural Disaster Hotspots: A Global Risk Analysis, 2005. 15. o. (Elérhető: <http://documents.worldbank.org/curated/en/621711468175150317/Natural-disaster-hotspots-A-global-risk-analysis> Letöltés ideje: 2019. december 15.)

³² Godrej p.57

³³ Godrej p.59

³⁴ IFRC World Disaster Report (2018) p.168

annual average and decade-long temperatures.³⁵ According to the World Health Organization, the frequency, the duration and the extent of heat waves will increase in the future. Heatwaves have become tendencies all over the world, including France in 2003 and 2006, Russia in 2010, India, Pakistan, China in 2013, India, Pakistan and Egypt in 2015.³⁶ Between 2000 and 2016, 125 million people were affected by heat waves, while an additional 175 million people were affected by heat waves in 2015 alone. In 2003, 70,000 people across Europe died due to heat waves, while in 2010, the heatwave claimed 56,000 lives in Russia in the summer months alone.³⁷ From the point of view of our systems of international relations, it is also fundamentally important to clarify that warming is not uniform. The greatest warming is observed in the northern hemisphere, along the middle and northern latitudes - mainly in mean night temperatures - and especially in the winter and spring months.³⁸ A 2014 study conducted in rural Pakistan found that excessive heat was more often a causal factor of long-term and long-distance migration than floods (mostly within the country).³⁹

The foreseeable global warming and the radical transformation of precipitation patterns will result in climate zones moving several hundred kilometres further North by the mid-21st century. However, the Earth's flora and fauna will not be able to follow this relatively fast and significant climatic shift. Although these changes may even be favourable, the ecosystems will not shift as a unit. The components and the relations among these components will be reorganised within a particular ecosystem, which will have mixed effects on the survival and distribution of species.⁴⁰ The overturning of terrestrial ecosystems becomes especially dangerous for communities that live in areas where the possibilities of adapting to new conditions are already limited, for example in mountainous regions, on islands, and in coastal areas.⁴¹

As a result of global warming, seasonal snow caps, glaciers, and permafrost are retreating, and although these are considered long-term effects, the rate of retreat is much faster than initially anticipated by climate scientists. These phenomena have a direct impact on water resources for residential and industrial use, local transport and the daily life of

³⁵ Godrej p.34

³⁶ Lennart Olsson: Climate migration and conflicts. In: Dimitra Manour – Andrew Baldwin – Dug Cubie – Anja Mihr – Teresa Thorp (eds.): Climate Change, Migration and Human Rights. Routledge, 2017. p.124.

³⁷ WHO: Climate change and human health - Information and public health advice: heat and health (Elérhető: <https://www.who.int/globalchange/publications/heat-and-health/en/> Letöltés ideje: 2019. december 15.) **Dead link**

³⁸ Godrej p.18

³⁹ Olsson p. 125

⁴⁰ IPCC Impact Assessment (1990) p.2

⁴¹ IPCC Impact Assessment (1990) p.3

communities in human-inhabited areas.⁴² On the one hand, local residents will be increasingly exposed to natural hazards such as landslides, and with the retreat of the ice, their livelihoods will not be guaranteed either in terms of their economic activities or, for example, in terms of their water resources. As will be demonstrated later, in Alaska, indigenous persons have had to be evacuated, which actually put the existence and survival of a culture in jeopardy.⁴³ In addition, although the melting of the sea surface ice may initially be favorable from the point of view of navigation, and thus even new trade routes may be established, the local ecosystem may be greatly upset by the melting of the ice.⁴⁴ In this context, according to current forecasts, the number of people at risk of hunger will increase by a total of 30 million by 2050.⁴⁵

As we can see from the intertwining effects of climate change presented above, water is one of the most vulnerable environmental and climatic elements. Even relatively minor changes in the climate can cause a huge problem in the water supply, especially – by definition – in already drier areas. While in some areas abundant precipitation, soil moisture and water storage may develop more favourably as a result of climate change, water supply will continue to decrease in other areas. This affects agriculture, water storage and distribution, and the use of hydropower even. This will be decisive especially in Southeast Asia, which is dependent on unregulated rivers.⁴⁶

Finally, the IPCC predicts a sea level rise of 30-50 cm by the middle of the century, which means a sea-level rise of one meter by 2100. This means that - primarily - small island states and coastal communities will be exposed to a significant threat in the near future. On the one hand, the melting of ice sheets contributes to sea level rise, but on the other hand, simple physics also plays a role, since warmer water has a larger volume, which also contributes to sea-level rise.⁴⁷ However, global warming will not only accelerate sea level rise, but may also modify ocean currents and alter marine ecosystems, which will have significant socio-economic impacts. In addition to the current level of overharvest and pollution, the one-meter rise in sea level predicted by the end of the century will result in small island states completely disappearing, or at least becoming uninhabitable. Tens of millions may be

⁴² IPCC Impact Assessment (1990) p.4

⁴³ Rachel Waldholz: Alaskan Village, Citing Climate Change, seeks Disaster Relief In Order to Relocate, NPR online, January 10, 2017; Azadeh Ansari: 'Climate change' forces Eskimos to abandon village, CNN online, April 28, 2009

⁴⁴ IPCC Impact Assessment (1990) p.4

⁴⁵ Godrej p.62

⁴⁶ IPCC Impact Assessment (1990) p.3

⁴⁷ Godrej p.35

forced to leave their homes as a result, and potentially relocate the whole population of the affected state to the territory of another state.⁴⁸

It is also worth noting that the forecasts of climate scientists have already proven to be too conservative. In 2000, the Worldwatch Institute found that the Arctic ice sheet was melting much faster than they had predicted. Accordingly, although the British Meteorological Institute has indicated that sea levels will rise by 40 cm by 2080, there is a chance that if humanity does not try to reduce its contribution to climate change, 40 cm will prove to be underestimated.⁴⁹

Low-lying coastal areas are hotspots of climate change impact due to the on-going sea-level rise, which is then exacerbated by coastal erosion due to increasing hurricane activities or other types of storms, as mentioned above. However, coastal deltas are also affected by subsidence due to various economic activities, such as the pumping of ground water, soil mining and/or extraction of natural gas. Additionally, the constructive forces of a coastal delta – ie. the sediments transported and deposited by the rivers – are decreased by dams to harness hydropower, for irrigation and industrial or domestic water use, by trapping the sediment and slowing down the amount of water flow.⁵⁰ 85% of such coastal deltas have experienced extreme flooding. Such principal hotspots are in Ganges-Brahmaputra delta in Bangladesh, with 170 million inhabitants, the most populous delta in the world. Olsson claims that once relevant funding is available, it will be claimed that it is a climate change induced migration.⁵¹ As Olsson states a "complex web of causality". Although traditionally, rural areas were associated with poverty, and thus rapid urbanisation has taken place all over the world in the 20th century, which continues in the 21st century, this may change in the future. Urban areas are increasingly centers for poverty and food insecurity. In Nairobi, 85% of the population were food insecure and 50% were suffering of severe food insecurity potentially causing "food riots".⁵²

Oceans are a particularly important issue of climate change for several reasons. As described above, sea level rise may make certain currently inhabited places uninhabitable. Moreover, oceans absorb a large portion of the carbon dioxide emitted, which acidifies the water, which contributes to the destruction of ocean life, which directly threatens human livelihoods and food security. Furthermore, the flow of the increasingly warm oceans also

⁴⁸ IPCC Impact Assessment (1990) p.4

⁴⁹ Godrej p.34

⁵⁰ Olsson p. 122

⁵¹ Olsson p. 123

⁵² Olsson p.124

changes, which, in addition to the already mentioned overturned ecosystems, also slows down the planet's natural cooling system, which means that the rate of global warming will be accelerating.⁵³ Again, referring to the complexity of the topic, it can be stated that water itself is the subject of separate research, as it is.

According to the Food and Agriculture Organization of the United Nations, droughts have affected more people in the past forty years than any other natural disaster. Droughts are increasing in frequency, duration and intensity as a result of climate change around the world. Moreover, the drought cannot be stopped and can only be predicted very doubtfully.⁵⁴ In 2000, a drought in Orissa, India, left 10 million people homeless, while a multi-year drought drove 16 million people into starvation that year alone.⁵⁵ Desertification is soil degradation that occurs either as a result of natural causes or as a result of human intervention, which threatens the existence of people living on land. According to the European Union's World Atlas of Desertification, soil quality has deteriorated in 75% of the Earth's land areas, which could reach 90% by 2050. Deterioration of the soil quality of agricultural lands means damages of tens of billions of euros for the European Union alone, and it is expected to mean a 10% decrease in crop yield worldwide by 2050, which will occur mainly in India, China and sub-Saharan Africa. By 2050, up to 700 million people may be forced to leave their place of residence for this reason alone.⁵⁶ According to the UN Convention on Combating Desertification (UNCCD), desertification causes food insecurity, water scarcity, loss of income and poverty, and migration.⁵⁷ Moreover, due to severe drought, climate change also disrupts traditional migration strategies for pastoral, nomadic livestock breeding communities, in the Sahel region as well as in Mongolia.

The consequences presented in the previous point are mostly direct consequences of climate change, but there are also indirect consequences. The effects of climate change therefore have ripple effects. Such an indirect effect is, for example, the impact of the cost of recovery after the storm on the economy of the given state, which, as we have seen, can be just as catastrophic. The severity of the economic consequences of climate change is clearly supported by the fact that, according to the assessment of one of the world's largest insurance

⁵³ IPCC Impact Assessment (1990) p.4

⁵⁴ FAO: Drought (Elérhető: <http://www.fao.org/land-water/water/drought/en/> Letöltés ideje: 2019. december 15.)

⁵⁵ Godrej p.38

⁵⁶ European Commission: New World Atlas of Desertification shows unprecedented pressure on the planet's natural resources, 21 June 2018 (Elérhető: https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4202 (Letöltési ideje: 2019. december 15.)

⁵⁷ UNCCD: Climate Change and Desertification, June 2007. (Elérhető: https://www.unccd.int/sites/default/files/relevant-links/2017-01/Desertificationandclimatechange_0.pdf (Letöltés ideje: 2019. december 15.)

companies, Munich Re, the frequency of natural disasters doubles every ten years.⁵⁸ In addition, some insurance companies are of the opinion that in addition to property insurance, life and pension insurance premiums may also increase due to the spread of climate change-related diseases.⁵⁹

It is also such an indirect effect if agricultural production in areas of desertification provides neither food nor livelihood, and thus a humanitarian or domestic political crisis develops from a famine that is not managed by the given state. In the case of Syria, we also saw that the urbanization processes accelerated by the effects of climate change - desertification and water scarcity - fuelled social tensions that slowly led to a ten-year war, the emergence of an international terrorist organization and the breakdown of regional security in the context of domestic and foreign politics.⁶⁰ Similarly, the drought that occurred in the southern part of the - former - Sudan influenced the migration route of the pastoralist society in such a way that the tribal tensions were renewed, which, under the given internal political conditions, eventually led to the secession of South Sudan.⁶¹

Overall, we can conclude that, for example, the socio-economic consequences of the overturning of terrestrial ecosystems will be significant in areas of the world where the well-being of society is fundamentally determined by the state of the terrestrial ecosystem. Here, the supply of food, fuel, medicine and building materials, as well as people's incomes, are at risk.⁶² Although the IPCC report notes that there is a lot of potential in agriculture in particular. For example, current agricultural crops could be replaced with ones that are more resistant to the consequences of climate change, and agricultural technology is also developing more and more rapidly. Although the total cost of this is difficult to calculate, it is in any case very high.⁶³ The most vulnerable settlements are those most exposed to natural hazards, such as sea and river floods, severe droughts, landslides, strong windstorms and tropical cyclones. Residents of developing countries, lower-income people, low-lying coastal and island dwellers, dry grassland dwellers, and poor urban dwellers are the most vulnerable in this context.⁶⁴ According to the IPCC report, sea level rise, increasingly intense floods and storm surges in Bangladesh, China and Egypt and small island states could lead to a

⁵⁸ Godrej p.41

⁵⁹ Godrej p.42

⁶⁰ Gleick, Peter: Water, drought, climate change, and conflict in Syria. In: *Weather, climate and society*, vol. 6 (2014) 331. o.

⁶¹ Selby, Jan – Hoffmann, Clemens: Beyond Scarcity: Rethinking water, climate change and conflict in the Sudan. In: *Global Environmental Change* vol. 29 (2014), 362. o.

⁶² IPCC Impact Assessment (1990) p.3

⁶³ IPCC Impact Assessment (1990) p.2

⁶⁴ IPCC Impact Assessment (1990) p.3

significant mass exodus. In addition, due to global warming, the supply of water and biomass may decrease, which on the one hand may cause energy shortages in developing countries, and on the other hand may upset the balance of power between different areas, such as states and parts of states. The structure of the energy supply should also be monitored in the case of climate change and other renewable energy sources, such as wind and solar energy.⁶⁵ In the Western part of the Earth, it will be vital to develop public policies that provide an adequate response to climate change, especially its effects on the energy, transport and industrial sectors. In the rest of the world, in developing countries, climate change will affect the availability and prices of production resources, such as energy, water and food, which would negatively affect their competitive position.⁶⁶

Human mobility can be a direct or indirect consequence of climate change. It is a direct consequence, for example, when people's homes are destroyed due to floods in Bangladesh, or hurricanes in the United States of America, or forest fires in Europe, and therefore they have to spontaneously change their place of residence and "run away" - in the common sense of the word - to the nearest safe place. However, can we define as a direct consequence of climate change that if people's place of residence is still physically intact, but their food, drinking water, or just their financial livelihood is not ensured due to the disappearance of their source of income and that is why they leave their place of residence? I will examine this issue in more detail in a subsequent chapter.

Finally, it is important to note that both the strategies aimed at mitigating climate change and those aimed at adapting to climate change start with fundamental legal, institutional and administrative changes and bring about such changes.⁶⁷ Private law relationships that have changed due to natural causes must be re-regulated, i.e. what happens when someone's property rights are limited because part of the property he owns is permanently covered by the sea, thereby reducing the useful floor area of his property. At the same time, sea level rise and ice melting also raise maritime law concerns and questions. Addressing the various consequences of climate change will in many cases require new authorities and institutions, but at the very least the mandate and structure of current authorities will need to be modified. Management plans will be necessary to implement the strategies. Accordingly, it is almost inevitable that the international community will regulate migration resulting from

⁶⁵ IPCC Impact Assessment (1990) p.3

⁶⁶ IPCC Impact Assessment (1990) p.3

⁶⁷ IPCC Working Group III: Climate Change: The IPCC Response Strategies (1990). 154. o.

(Elérhető: https://www.ipcc.ch/site/assets/uploads/2018/03/ipcc_far_wg_III_full_report.pdf Letöltés ideje: 2019. december 15.; a továbbiakban: IPCC Response Strategies (1990))

climate change through international law, but I will write about this in more detail in the following chapters.

1.2.IDENTIFYING CLIMATE CHANGE HOTSPOTS

As I explained in the previous sections, since it is difficult to accurately predict the consequences of climate change due to their complexity, and because the consequences of climate change are not distributed uniformly geographically, climate scientists like to identify so-called climate change hotspots and crisis zones, which can significantly facilitate risk management, planning and preparation in practice. These climate change hotspots are areas that show the largest statistical differences in climate characteristic numbers when considering multiple climate factors (such as means, variability, and extremes).⁶⁸ Accordingly, a group of researchers identified the Amazon, the Sahel, tropical West Africa, Indonesia and Central East Asia as hotspots of climate change.⁶⁹

The First Impact Assessment of the IPCC in 1990 envisioned a decline in agricultural productivity in the following regions: Brazil, Peru, the Sahel, South-East Asia, Central Asia and China.⁷⁰ The total population of these regions is currently approx. 2.3 billion people, i.e. currently approx. one third have their food and livelihood directly threatened. Trade trends in agriculture, and especially cereals, are being reversed in currently high-yielding areas such as Europe, the United States, South America and Western Australia.⁷¹ The World Meteorological Organization has thus identified the Arctic - especially Siberia and Sweden -, Southern Europe - especially Portugal, Spain and Greece - and North America - especially Lower and Upper California, Canada and Alaska - as particularly vulnerable areas in terms of forest fires. Due to the intensification of storms and sea level rise, about 40 low-lying island countries may literally disappear from the face of the Earth. According to the position of the UN Environmental Protection Program, several Tarawa atolls belonging to Kiribati should be evacuated now. In the area of Kiribati, several small islands have already been swallowed up by water, and on the largest island, a new, inland route had to be marked for the coastal roads.⁷²

⁶⁸ Turco – Palazzi – Hardenberg – Provenzale: Observed climate change hotspots. In *Geophysical Research Letters*, April 2015. p.1

⁶⁹ Turco et al. p.7

⁷⁰ IPCC Impact Assessment (1990) p.2

⁷¹ IPCC Impact Assessment (1990) p.2

⁷² Godrej p.35

Climate change is affecting Africa the most for various reasons: based on 2015 data, four of the world's ten most affected countries - Mozambique, Malawi, Ghana and Madagascar - are located on this continent.⁷³ According to another classification, more than half of the 100 most vulnerable countries are in Africa.⁷⁴ Since 60% of Africa already has a desert or arid climate, even minor changes have a serious impact on the local ecosystem. This is confirmed, among other things, by the Hadley Center of the British Meteorological Institute, which stated that, despite the differences between regions, the negative effects on food production are most prevalent in the tropics, and especially in Africa. In Africa, 18% more people are projected to be at risk of hunger by 2050 due to climate change.⁷⁵ The Sahel region is a particularly vulnerable area, the ecological balance of which was disrupted in the 1970s as a result of a radical decrease in rainfall and has been decreasing ever since.⁷⁶ The disappearance of glaciers in South Asia could mean a catastrophe for hundreds of millions of people, because glacier melting plays a more important role than monsoon rains in the irrigation of farmland and the supply of drinking water to the population.⁷⁷ Since 80% of Bangladesh is a delta, the country is especially susceptible to the impacts of climate change. The population of Bangladesh is currently around 170 million people, and rising, therefore As the 6th largest country of origin with around 8 million people living abroad, and remittances contributing to over 5% of the GDP,⁷⁸ Bangladesh is a “climigration hotspot” on its own.

Finally, it is important to note that Europe is also threatened by many climate threats. The Netherlands, for example, in the 20th century. In the 19th century, he built a dam system that made it possible to defend himself against another possible huge flood. However, the famous dam system will prove vulnerable to the predicted rise in sea levels.⁷⁹ And in order for the Netherlands to protect itself in the event of a 50 cm rise in sea level by developing its dam system, approx. It would cost 3.5 billion US dollars⁸⁰, which is a lot even for the Netherlands, but almost unaffordable for a developing country.

This hotspot approach is also reflected in the World Bank's policy work. In a report published by the World Bank, another hotspot analysis focused on natural disasters ("natural disaster hotspots"). In terms of hotspots, the following six natural disasters were considered:

⁷³ Godrej p.62

⁷⁴ Glied – Bumberák p.16

⁷⁵ Godrej p.62

⁷⁶ Glied – Bumberák p.16

⁷⁷ Godrej p.37

⁷⁸ <https://reliefweb.int/report/bangladesh/bangladesh-survey-drivers-migration-and-migrants-profile>

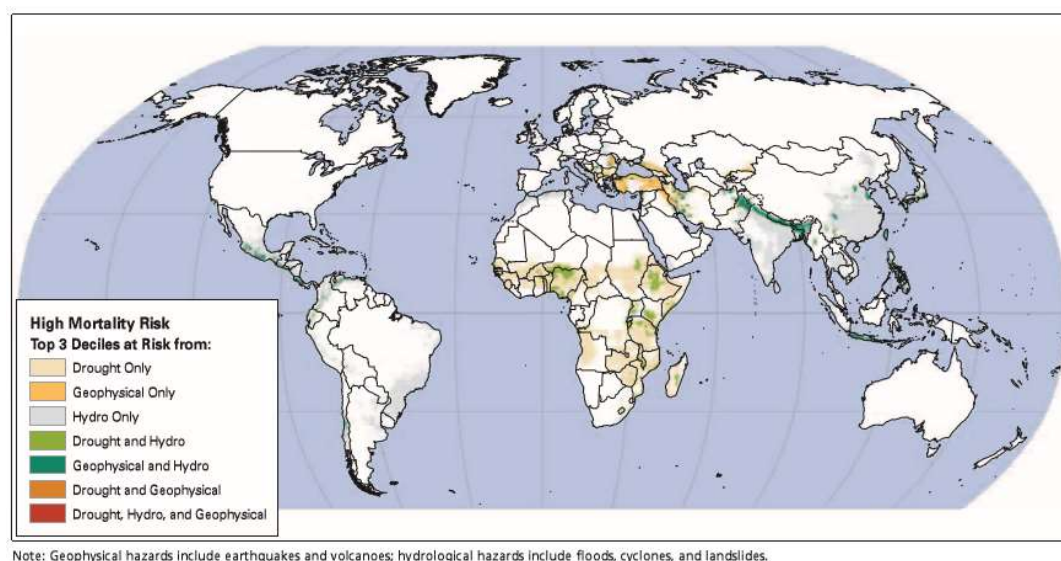
⁷⁹ Godrej p.36

⁸⁰ Godrej p.39

earthquake, volcanic eruption, landslide, flood, drought and cyclones.⁸¹ Nota bene: earthquakes are not a consequence of climate change. Among the risks, both human and material losses were included. According to data from the World Bank, it is currently 25 million km² - that is, approx. 19% - and 3.4 billion people - i.e. more than half of the world's population - have a relatively high exposure to at least one natural disaster. In comparison, the exposure of 3.8 million km² and 790 million people is relatively high in terms of at least two natural disasters, and a total of approx. 105 million people are at risk of at least three or more natural disasters. The research also confirms the findings of the IPCC, according to which drier areas will be more threatened by drought, coastal areas more by floods, cyclones and landslides, while earthquakes and volcanic eruptions will occur more in mountainous regions, i.e. the usual but more extreme weather anomalies will appear. In terms of this drought, the interior regions of North and South America, Europe and Asia - thus the Middle East - are considered focal points. East and South Asia, Central America and Southwest America are mainly threatened by geophysical and hydro-meteorological disasters. It is also important to add that natural disasters can be connected in these areas, so landslides can occur after cyclones, and dams damaged by earthquakes can lead to floods. The report itself notes that these areas are the most densely populated areas on Earth, so the risk of human casualties (Figure 1) and economic loss (Figure 2) is very high.⁸²

The figure below shows the global distribution of natural disasters requiring human casualties.⁸³

[Figure 1]



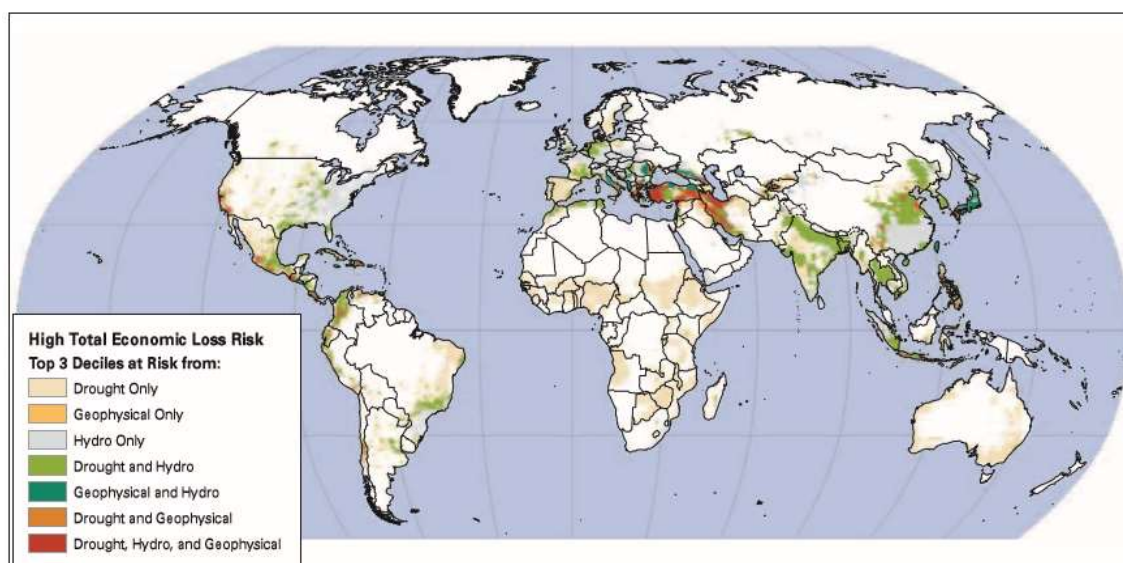
⁸¹ World Bank Report p.1

⁸² World Bank Report p.2

⁸³ World Bank Report p.5

The figure below shows the global distribution of economic losses from natural disasters.⁸⁴

[Figure 2]



Identifying the focal points of climate change and natural disasters can help to make the threats to specific communities more predictable, thereby facilitating the planning of either direct disaster prevention measures or long-term international development investments, and preventive risk management.⁸⁵

In addition to the scientific analysis of climate change (Working Group I), the IPCC also examines the environmental consequences and socio-economic effects of climate change (Working Group II), and in its reports it formulates - scientifically based - recommendations for response strategies to climate change and its consequences ("response strategy") (Working Group III).⁸⁶ The 1990 report of the IPCC's Second Working Group made the following findings regarding possible response strategies.⁸⁷ Climate change is a global problem in the literal sense of the word, which assumes that effective action and action is possible only in the framework of worldwide, coordinated cooperation. In addition, industrialized and developing countries share a responsibility to address climate change-related problems. Nevertheless, industrialized Western countries have a special responsibility. On the one hand, since they are clearly responsible for the emission of greenhouse gases in the atmosphere in 1990, and therefore they are primarily burdened with the obligation to bring their economy into line with the goal of curbing climate change.⁸⁸ This situation has changed

⁸⁴ World Bank Report p.6

⁸⁵ World Bank Report p.15

⁸⁶ IPCC Impact Assessment (1990) p.1

⁸⁷ IPCC Response Strategies (1990) p. XXVI

⁸⁸ IPCC Response Strategies (1990) p. XXVI

somewhat, since in the last 30 years, China and India, among others, have also brought in their backwardness. On the other hand, given their industrial, technological and economic superiority, developed countries also have the obligation to facilitate the transition of developing countries to climate-friendly economy and technologies, without hindering their development. At the same time, it is the duty of developing countries that, although their emissions are constantly increasing and this increase seems inevitable for the time being in order to reach a certain level of development, they must do everything possible to make their economies climate-friendly. Accordingly, in order to prioritize environmental protection aspects, all states of the world must switch from the paradigm of economic growth to the paradigm of sustainable development, which can create the ideal balance between economic and environmental goals. In the meantime, climate change mitigation and adaptation strategies must be designed as an "integrated package" that complements each other. Finally, in order to achieve all these goals, a well-informed public participation is essential, and the social, economic and cultural background of different states may also require customized solutions.

However, adaptation to climate change is necessary because it is not just a temporary crisis, we have to somehow drag it out for a decade or two, but we also have to prepare our society for changes spanning generations. The climate changes experienced in the current decade are the result of greenhouse gas emissions half a century ago, even though they were at a much lower level then.⁸⁹⁹⁰

The Second Working Group of the IPCC also found that time is running out and we can even say that, combined with inaction, it is specifically working against us. Accordingly, the IPCC also determined which containment and adaptation strategies are necessary in the short term, and which are long-term.⁹¹ From the point of view of the subject of this thesis, it is worth highlighting that as early as 1990, among its short-term requirements, the IPCC called on the members of the international community to develop natural disaster prevention programs and protocols; and by assessing the potential damage to vulnerable coastal populations, develop comprehensive management plans that reduce their vulnerability.

In any case, it should also be noted that not only the natural consequences of climate change have socio-economic effects, but also the response strategies given to them. The Second Working Group of the IPCC addressed this in its report. Given that both mitigation

⁸⁹ Godrej p.14

⁹⁰ By the way, the problem of the concentration of carbon dioxide in the atmosphere was already raised by Svante Arrhenius in 1896, but her study did not receive more interest until almost 100 years later. Godrej p.23

⁹¹ IPCC Response Strategies (1990) p. XXVI

and adaptation strategies can fundamentally turn the lives of local residents upside down, both economically and especially socio-culturally, it is definitely necessary to consult them.⁹² Thus, for example, an adaptation strategy for coastal communities may be to retreat inland. With this, on the one hand, they will clearly lose areas and private property that can be used for economic purposes, but also locations representing cultural heritage value. On the other hand, the presence of even a larger group of people who at least need a place to live can cause conflict within the local community.⁹³ In addition, throughout history there have been many examples of neighbouring villages being in hostile relations with each other, so that when the *casus belli* occurred, tribal fights that escalated to a humanitarian crisis or even genocide arose. In the case of coastal communities, the Third Working Group of the IPCC defines the actual adaptation of the population as a possible adaptation strategy, that is, people living in stilt houses, boathouses or behind seawalls.⁹⁴ Thus, although the land actually disappears, the local people may feel that they did not have to flee. In any case, it is important to examine the extent to which these serve only as a temporary solution.

According to the World Bank's point of view, migration, or more specifically emigration, is an established defense mechanism when it comes to income diversification, survival, economic or environmental crisis risks. At the same time, they emphasize the often overlooked fact that migration within national borders is more typical than international migration, as far as population movements related to climate change and permanent environmental degradation are concerned.⁹⁵ In connection with climate change, the World Bank also identified emigration and immigration "hotspots". Hotspots will emerge by 2030 and reach their final extent by 2050. Hotspot analysis serves to shape development policy and investment instruments in a purposeful and targeted manner. It is important to note that such hotspots are usually created as a result of internal migration (or even urbanization). However, if such a hotspot is located close to the border, migrants inevitably cross an internationally recognized border. According to IOM, some of the biggest hotspots are the Sahel Region, the Pacific Islands, Central Asia, Brazil and Mexico, India, China.⁹⁶ Expected change in disaster displacement risk to increase in the next decade with 10% or more in the Philippines,

⁹² IPCC Response Strategies (1990) p. 152 **This is totally outdated info. Irrelevant in 2024**

⁹³ IPCC Response Strategies (1990) p. 154

⁹⁴ IPCC Response Strategies (1990) p. 154

⁹⁵ Kumari Rigaud, Kanta, Alex de Sherbinin, Bryan Jones, Jonas Bergmann, Viviane Clement, Kayly Ober, Jacob Schewe, Susana Adamo, Brent McCusker, Silke Heuser, and Amelia Midgley. 2018. *Groundswell: Preparing for Internal Climate Migration*. Washington, DC: The World Bank

⁹⁶ *The Atlas of Environmental Migration* p.XVI

Afghanistan, 3-10% in Pakistan, Myanmar, Sri Lanka, Vanuatu, and China. Vulnerable locations becoming more vulnerable.⁹⁷

In order for humanity to survive, on the one hand, it is necessary to alleviate and moderate climate change and its effects (mitigation strategy), on the other hand, humanity and people must prepare for the consequences of climate change, that is, we must adapt to it (adaptation strategy). Adaptation to climate change directly and indirectly raises many economic, social, political and legal opportunities and issues.

In its 1990 report, the IPCC already warned that climate change and the proliferation of extreme weather phenomena could trigger waves of migration from Latin America, Africa, South and East Asia, and certain areas of the Pacific archipelago. Climate migration and the climate refugee appear as new concepts in the literature and for the scientific sphere. Currently, there are still partly unclear processes behind this complex phenomenon, but researchers also agree that climate change may mean the largest volume of population migration in history so far.⁹⁸

According to the UN and the World Bank, migration is one of the adaptation strategies to global warming.⁹⁹ Common sense also dictates that if a person is exposed to a natural disaster or negative economic changes related to climate change, and as a result even an armed conflict, the natural reaction of a person is migration. Accordingly, according to the European Union, emigration is the only survival strategy for sea level rise caused by climate change.¹⁰⁰ The very first report of the Third Working Group of the IPCC treats the relocation of people as well as their spontaneous, forced relocation as a clear adaptation strategy.¹⁰¹ According to the position of the Third Working Group, the resettlement should definitely take place in a pre-planned manner in order to avoid tension within the community and between the affected communities.¹⁰²

1.3.NON-LEGAL DEFINITIONS

⁹⁷ The Atlas of Environmental Migration p.15

⁹⁸ Glied & Bumberák, p.16

⁹⁹ Kayly Ober: Migration as adaptation – exploring mobility as a coping strategy for climate change. p.4 (Elérhető: http://climatemigration.org.uk/wp-content/uploads/2014/02/migration_adaptation_climate.pdf Letöltés ideje: 2019. december 15.)

¹⁰⁰ IOM: Migration as an Adaptation Strategy to Climate Change (Elérhető: <https://weblog.iom.int/migration-adaptation-strategy-climate-change> Letöltési ideje: 2019. december 15.)

¹⁰¹ IPCC Response Strategies, 154-157. o.

¹⁰² IPCC Response Strategies, p. 154

The term “climate refugees” was first used in 2011, in a report commissioned by the UK government, which defines them as “people who have to leave their habitats, immediately or in the near future, because of sudden or gradual alterations in their natural environment related to at least one of three impacts of climate change: sea-level rise, extreme weather events, and drought and water scarcity.”¹⁰³ Although this definition seems fairly comprehensible at first, its practical application would prove difficult. It is unclear what “having to leave” means, to what extent “alterations in their natural environment” are acceptable, and how the adverse effects of climate change may be distinguished legally from anthropogenic environmental deterioration.

Within the United Nations and its associated organisations, the term “climate refugees” as such has never been used or referred to due to the nature of refugee law – as described later. However, in a 1985 United Nations Environment Programme policy paper titled ‘Environmental Refugees’, the author El-Hinnawi defines „environmental refugees” as “those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life. By ‘environmental disruption’ in this definition is 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.”¹⁰⁴ This very wide definition encompasses both internal and international migration, as well as temporary and permanent migration. The definition however, focuses on forced displacement, and does not address mobility as such. It addresses all types of environmental changes, and not only those induced by climate change. The definition was vividly criticised because of its large scope: amongst others, Bates notes that this definition makes no distinction between refugees who flee volcanic eruptions and those who gradually leave their homes as soil quality declines.¹⁰⁵

¹⁰³ Migration and Global Environmental Change, Foresight, Final Project Report. London, The Government Office for Science, 2011

¹⁰⁴ EL-HINNAWI 1985. „Environmental refugees” have alternative definitions as well, making the whole business of legally defining this phenomenon even more complex. According to Myers: *„Environmental refugees are persons who can no longer gain a secure livelihood in their traditional homelands because of environmental factors of unusual scope, notably drought, desertification, deforestation, soil erosion, water shortages and climate change, also natural disaster such as cyclones, storm surges and floods. In face of these environmental threats, people feel they have no alternative but to seek sustenance elsewhere, whether within their own countries or beyond and whether on a semi-permanent or permanent basis.”* Hartmann, Betsy: Rethinking climate refugees and climate conflict: Rhetoric, reality and the politics of policy discourse. *Journal of International Development*, Vol 22. Issue 2 (March, 2010) pp.233-246

¹⁰⁵ François Gemenne: Why the numbers don’t add up: A review of estimates and predictions of people displaced by environmental changes, *Global Environmental Change*, Volume 21, supplement 1, 2011, pp. 41-49

At this point it must be highlighted that „climate refugees” are not the same as „environmental refugees”. Our climate system is just one of the major components of our natural environment¹⁰⁶, therefore the adverse effects of climate change can be perceived as examples of environmental degradation. However the latter encompasses a much wider variety of biophysical alterations in our natural environment.¹⁰⁷ Therefore the distinction between “climate refugees” and “environmental refugees” is intentional as climate refugees are just a sub-group of displaced persons within the broader group of environmental refugees. Additionally, according to the Climate And Migration Coalition¹⁰⁸ environmental degradation can manifest itself in rapid on-set events such as natural disasters (earthquakes, extreme weather events, etc.) and slow-on-set events that involve a gradual deterioration of the environment (such as salinization, land degradation, etc.). As part of the broader environmental system, the adverse effects of climate change can manifest themselves in rapid on-set events (such as forest fires, cyclones, floods) and slow on-set events (such as sea-level rise, droughts, melting ice). It is essential to make these distinctions since the occurring event will determine the type of “displacement” it causes. The consequences of rapid on-set events are displacement - internal displacement in particular, since people tend to move towards the nearest safe place -, permanent or temporary migration flows with a bigger probability of return and participation in rebuilding. Slow on-set events result in displacement as well as voluntary migration – as migrants have more time to deliberate on where to move -, international migration is characteristic – since the displaced have more time to plan –, and their move may be permanent, temporary or even circular.¹⁰⁹

However, Mayer argues that it is not a legal misnomer to reference environmentally displaced persons as refugees, since it is not merely a semantic reference but a conceptual one. Therefore replacing it with any other substantive term such as migrant or displaced

¹⁰⁶ See Encyclopedia Britannica: „Environment: the complex of physical, chemical, and biotic factors that act upon an organism or an ecological community and ultimately determine its form and survival. Some of its major components are the atmosphere, the climate, the soil, the hydrosphere and the oceans. (Available at: <https://www.britannica.com/science/environment> Downloaded: 29.06.2020.)

¹⁰⁷ Environmental degradation can be natural or caused by disproportionate human intervention. Environmental degradation can be slow and rapid on-set, i.e. salinization of land or the devastation of a natural disaster, such as an earthquake. Within the scope of environmental degradation the adverse effects of climate change may also be rapid or slow on-set, i.e. the increase devastation of a tidal wave or gradual sea-level rise.

¹⁰⁸The Climate and Migration Coalition: Climate and Migration (Available at <http://climatemigration.org.uk/> Downloaded: 07.05.2020.)

¹⁰⁹ Coming up with names is a creative process, whereby Thorp refers to climate change induced human mobility as “climigration”. Thorp, Theresa: Transitional law in the climate change context. In: Dimitra Manour – Andrew Baldwin – Dug Cubie – Anja Mihr – Teresa Thorp (eds.): Climate Change, Migration and Human Rights. Routledge, 2017. p.68

person in fact will not contribute to solving the legal issue at its core.¹¹⁰ This core issue is providing protection to those whose state is unable to or unwilling to provide. Mayer goes on to explain that creating a legal definition for environmental refugees may be impractical, as it would create a black-and-white definition with a lot of gray areas. But persecution and risk can be assessed generally as well, such as the precondition of membership of a certain social group.¹¹¹ Mayer also claims that empirical evidence shows that environmental displacement is mostly internal and seldom international, and it is not expected to become international. And so some are forced to leave, and some do cross an internationally recognized border but not all environmentally displaced persons are forced to leave their countries to seek shelter in another.¹¹² Finally, Mayer also claims that there is no necessary causation between environmental inducement and vulnerability.¹¹³ There might be only be a direct causal link in certain instances, but as Mayer claims, not necessarily all the time. Moreover, Mayer claims that establishing the threshold of harm, the responsible state, the injured state and once again proving causation is the biggest challenge in establishing legal liability based on which international protection may be granted.

Other scholars try to be as inclusive as possible with their definitions. Citing Renaud, Thorp classifies environmentally displaced persons as the following: (a) Environmentally motivated migrants are people who may have to pre-empt the worst and leave because of an environmental stressor; (b) environmentally forced migrants are people who, due to an environmental stressor, have to leave to avoid the worst; and (c) environmental refugees (including disaster refugees) involuntarily flee the worst, and their displacement can be either temporary or permanent.¹¹⁴ Meanwhile Bates uses the term “environmental refugees” to qualify any person who flees environmental harm, but then creates subcategories based on the type of environmental harm as follows: (a) disaster refugees, who flee natural or technological disasters; (b) expropriation refugees, who are permanently and intentionally relocated by economic development or war; and (c) deterioration refugees, who leave their homes due to gradual environmental degradation.¹¹⁵ Such abstract and theoretical definitions enable us to better understand the issue but do not bring us closer to a solution under international law.

¹¹⁰ Mayer, Benoit: Critical perspective on the identification of „environmental refugees” as a category of human rights concern, In Dimitra Manour – Andrew Baldwin – Dug Cubie – Anja Mihr – Teresa Thorp (eds.): *Climate Change, Migration and Human Rights*. Routledge, 2017 p.30

¹¹¹ Mayer p.33

¹¹² Mayer p.31

¹¹³ Mayer p.36

¹¹⁴ Thorp p. 73

¹¹⁵ Diane C Bates: *Environmental refugees? Classifying Human Migration Caused by Environmental Change*, 23 *Population and environment*, 465, 468 (2002) p.469-475.

Although for the time being the definitions of “climate refugees”, “environmental refugees”, “environmental displacement”, “environmental migration”, as well as “disaster displacement” are broad or too vague, are applied interchangeably, inconsistently or in consistency with the political agendas of the negotiation platforms, there is definite consensus regarding the environmental deterioration (and climate change in particular) – migration nexus. And although at first international lawyers may urge for a single, uniform definition, since that would be the most legally sound response, there are some institutional and international legal means of providing protection to vulnerable people, without having to engage in uncomfortable political debates.

Briefly touching upon ethical grounds for reform proposals of International Refugee Law are solidarity and distributive justice arguments, as well as corrective justice and the principle of common but differentiated responsibility for climate change.¹¹⁶ In this dissertation I will refer to these under the collective terms of environmental justice or climate justice. Such solidarity arguments focus on categories of “vulnerable migrants”, “irregular migrants” or survival migrants. The definitions above are merely descriptive and they do not confer any obligations on any state. In this dissertation, I will try to describe a phenomenon and define it to create an operational definition. Protection is necessary since the vulnerability of environmentally displaced persons derives from the fact that the disaster exposes them particularly to the risk of non-recognition of their essential rights because of the legal void that applies to them at present.¹¹⁷

In this dissertation, I will use the term “human mobility”, in its broadest sense, as a movement of a person or a group of persons across an internationally recognised state border or within a state border, either voluntarily or involuntarily, for whatever reasons, and for however long. Thus “international human mobility” is a movement of a person or a group of persons through an internationally recognised state border, either voluntarily or involuntarily, for whatever reasons and for however long. In this vein, “climate change induced human mobility” is the movement of a person or a group of persons, across an internationally recognised state border or within a state border, either voluntarily or involuntarily, for however long, due to gradual or rapid onset effects of climate change, affecting the habitual place of residence of a person of concern.

In this chapter, I substantiated that abrupt environmental changes, as well as more gradual environmental deterioration may cause human mobility. In particular, I established

¹¹⁶ Mayer p. 35

¹¹⁷ Prieur p.7

the link between climate change and human mobility. As I will demonstrate in the following chapters, there is consensus among climate scientist as well as policy makers that human mobility will be induced primarily by rising sea-levels, an increasing quantity and intensity of storms, and drought, desertification and water shortages.¹¹⁸ Some states may lose their whole territory, but most coastal states will only lose portions of their territorial land. Both scenarios induce human mobility, but in different ways. As I explained above, The Climate And Migration Coalition has identified the correlations between the negative – rapid and slow – consequences of climate change and the types of migration. I have implemented my own preliminary interpretation of the available resources, as shown in the figure below:

[Figure 3]

Categorisation of climate change induced human mobility

Slow on-set effects of climate change		Rapid on-set effects of climate change	
involuntary/voluntary mobility	Desertification	Floods	involuntary mobility
international mobility more likely	Unpredictable precipitation	Hurricanes	internal mobility more likely
permanent, temporary, circular mobility	Ice-melting	Cyclones	temporary mobility
	Sea-level rise	Wildfires	voluntary return more likely

¹¹⁸ Bonnie Docherty and Tyler Giannini: Confronting a rising tide: A proposal for a convention on climate change refugees. Harvard Environmental Law Review, Vol. 33. p.355

CHAPTER 2: THE CURRENT MANAGEMENT OF ENVIRONMENTALLY INDUCED HUMAN MOBILITY

It is my observation that environmentally induced human mobility, and especially climate change induced human mobility is currently managed on an ad hoc basis, by the individually affected states. In this chapter, I will demonstrate through individual case studies, how environmentally induced mobility has been managed to date and thus assess how whether it is managed on an ad hoc basis by the individually affected states or whether there was a common effort involved from other affected states or the international community as a whole. With the case studies, I will explore various types of human mobility induced by environmental factors, in particular climate change, but not only those. I will demonstrate how states have managed emergency situations, a mass influx of displaced persons after a natural disaster, and what approaches the affected states take towards other forms of human mobility induced by climate change.

2.1. EVACUATION AS A MEANS OF DISASTER RELIEF

When an environmental hazard can be predicted and early warning mechanisms are in place, disaster relief authorities can usually conduct evacuations in advance in the case of cyclones or storms for example. According to IOM, evacuations are organised group movements to designated evacuation sites, usually temporary localities such as school, stadiums or concert halls.¹¹⁹ Evacuations can also entail individual movements either to collective sites or to alternative shelter, such as a relative's or rented temporary accommodation. Evacuations can be compulsory or voluntary, depending on the context, and on the projected intensity of the event. Evacuations are one of the main means of disaster risk reduction and management efforts, and sometimes the only option to protect persons of concern. However, there are certain disasters that are unpredictable, such as earthquakes or flash floods that leave no time for evacuation and lead to post-hoc displacement. In this case, people move to evacuation sites following the disaster. The success of such evacuation measures varies depending on the local population's capacities and capabilities. In case of Hurricane Katrina, half of the victims were older people who were unable to leave their houses and in Bangladesh, more women die than men because they never learn to swim.¹²⁰ Finally, evacuation measures should be temporary but sometimes temporary evacuation sites are converted into permanent

¹¹⁹ The Atlas of Environmental Migration p.84

¹²⁰ The Atlas of Environmental Migration p.84

settlements. This was the case of the Philippines after Typhoon Haiyan that displaced 4.1 million people in 2013. Families were unable to return to their destroyed homes and therefore the transitional bunkhouse units remained permanently in operation. Evacuations are therefore one of the most efficient and effective emergency response measures but disaster relief efforts require permanent and durable solutions.¹²¹

It must also be noted that evacuations are ordered also in the case of man-made disasters. As such, industrial accidents are also a major drivers of displacement. The examples range from the Fukushima nuclear accident in 2011, where 150,000 people were evacuated. In Zhumadian city in China in 1975 a dam flood took the homes of 11 million people. Following a gas leak in Bhopal, India, 600,000 people were evacuated due to a toxic cloud. The infamous Chernobyl nuclear accident of 1986, displaced 350,000 people, and a nuclear accident on the Three Mile Island in 1979, in the USA, displaced 140,000 people for three weeks. Mines are also frequent causes of industrial accidents. Over 20,000 people were evacuated from Picher, USA due to contamination and the coal mine fire in Centralia, USA forced 1435 people to evacuate, and now only 10 people inhabit the city. Industrial accidents cause considerable and often irreversible environmental degradation and lead to a level of displacement comparable to that caused by natural disasters. However, it is impossible to pre-emptively evacuate populations in case of industrial accidents, and due to the pollution and contamination. Even evacuees aren't safe from the effects of the industrial accident, as populations generally will not be able to return to their homes for a considerable period of time, even if they are intact. Evacuees must thus build a whole new life, somewhere else permanently.¹²² Among the causes of environmental degradation that lead to population displacement, development and infrastructure projects remain generally unnoticed as well. According to mainstream (international) development policies, the higher the rate of development, the lower the rate of migration. However, infrastructure investment and land grabbing contributes to environmental degradation and therefore to some extent may also contribute to environmentally induced human mobility.¹²³

2.2. PLANNED RELOCATION AS A MEANS OF DISASTER RISK REDUCTION

¹²¹ The Atlas of Environmental Migration p.84

¹²² The Atlas of Environmental Migration p.55

¹²³ The Atlas of Environmental Migration p. 56

The IPCC drew the international community's attention in their very first report of 1991 to the fact that due to the severe negative effects masses of people may experience „displacement” and will be forced to 'spontaneous relocate'.¹²⁴ In 1995, the island of Bhola in Bangladesh disappeared under water, so half a million people had to leave their homes. The islands of Tebua Tarawa and Abenua of Kiribati disappeared under water in 1999, and the Cartaret islands of Papua New Guinea drowned in 2005. In the latter case, 1000 inhabitants were relocated to Bougainville, a 62 miles island further away. In 2006 the island of Lohachara in India disappeared.¹²⁵ These islands had to be evacuated, and it was The Guardian that titled them and used the term „climate refugees for the first time.

There are a lot of examples in history concerning this type of mobility. We have seen forced, arbitrary, and the state ordered in- or outward relocation of certain populations. However, there are also examples of relocation programs organised or facilitated by the state, with voluntary participation of the persons of concern. Just like voluntary return or voluntary integration programs. So, although at first planned relocation may have negative connotations, it may also be realised through a relocation program fully respecting human rights of the moving population and the receiving community.

In the 21st century, one of the means of adaptation to climate change and environmental deterioration is „survival migration”, meaning moving away to seek shelter and safety. Although we cannot avoid displacement as we cannot eliminate the necessity to move, such as the environmental factors inducing climate change, we may avoid the unnecessary and undignified vulnerability that displacement entails by planning and organising dignified relocation. This organised relocation may happen in case of emergency, by relief organisations, temporarily or permanently. Or this may happen, deliberately, planned and well-organised way. In the past 10 years we have seen examples of both.

The Asian Development Bank defines „proactive migration”¹²⁶ as acknowledging and accepting the nature of migration and prognosed trends, displacement is to avoid the anticipated damages. In order to avoid or at least manage this, it is imperative to implement „a proactive policy of migration with dignity”), without which, quoting Coelho, climate

¹²⁴ The IPCC Response Strategies p.154-157

¹²⁵ GROMILOVA, Mariya: Revisiting Planned Relocation as a Climate Change Adaptation Strategy: The Added Value of a Human Rights-Based Approach. *Utrecht Law Review*, Vol. 10, Issue 1 (January) 2014, 75. p.

¹²⁶ Asian Development Bank (ADB): A Region at Risk, The human dimensions of climate change in Asia and the Pacific. 2017. (<https://www.adb.org/sites/default/files/publication/325251/region-risk-climate-change.pdf> Letöltve: 2020.11.28.)

change shall birth an „aid dependent population”¹²⁷, which will not only increase the vulnerability of persons of concern but also of the international community.

One of the ways of managing unforeseen but predictable migration pressures is – according to disaster relief terms – evacuation, or relocation. Kiribati and Tuvalu already purchased land on Fiji so that when the time and the tide comes, their population may relocate. In case of natural disasters, survivors may receive humanitarian aid on site and in other countries, but this is on ad-hoc basis at the receiving state’s own discretion. Another possible way of managing such migration pressures, which is more dignified then evacuation or even planned relocation, is to establish a quasi climate migrant status.

Although academic literature is limited, national authorities have implemented the planned relocation of a local population to safety as a means of climate change adaptation strategy. In order to avoid the emergency evacuation of persons of concern having to leave the endangered location, some states are toying with the idea of pre-planned, long-term relocation of such citizens. This planned relocation of the population must be distinguished from the individual, ad-hoc evacuation of an emergency situation by the local or state authorities or the voluntary individual relocation of persons of concern on their own. Planned relocation is a mix of these two solutions, and all three solutions have their historical and international examples, however climate change is now topical. There are significant financial and materials costs of planned relocation, therefore it cannot be a single state solution. Local authorities, state authorities, local and international non-governmental organisations also cooperate.

In the following section, I will demonstrate three case studies, where among other things also the indigenous culture of the persons of concern is also endangered. Survival for individuals and the whole communities, and indigenous culture and cultural heritage came to question. Therefore, in two out of the following cases, one of the main priority was to relocate the whole community and preserving the cultural integrity of them in their new physical and geographical circumstances, while individually taking care of such persons of concern. The UN has initiated a consultation with indigenous persons and persons leading traditional lifestyles to recognize their lifestyles as „official” means of adaptation to climate change by the international community. Therefore, in this section, I will also demonstrate how the international community and thereby international law ensures the respect of

¹²⁷ Saber Salem: Climate Change and the sinking island states in the Pacific, 2020. (<https://www.e-ir.info/2020/01/09/climate-change-and-the-sinking-island-states-in-the-pacific/> Letöltve: 2020.12.15.)

collective rights of indigenous persons of concern in a situation, when for example not just coastal areas are disappearing due to sea level rise but also the indigenous culture.

2.2.1. India

170 million people live on the coasts of India. According to IDMC's statistics only as a result of the monsoons and floods around 3.6 million persons were displaced between 2008 and 2018. Sea-level rise between 1990 and 2016 have costs 235 km² of coast land for India.¹²⁸ India also manages its disaster relief according to international disaster relief law as well as implementing ad hoc emergency protocols. There is however no „*pre-emptive disaster management*” for the slow-onset effects of climate change on a federal level. However there are certain state initiatives.

Already back in the 1970s, the population of Lohachara and Ghoramara islands had to be removed onto the nearby Sagar island. The state provided the displaced with land, house and a stipend. Nowadays, one of the most vulnerable places in India are the seven villages of Satabhaya in Odisha State. Since in the 1980s and 1990s, these villages started disappearing one by one, the state started to relocate the population around 2011. In 2016, 12 km from the original site a new town (Bagaptia) was established with 570 relocated families and 247 refurbished houses. The settlers received agricultural plots, housing, and the necessary infrastructure from the state. While such relocations may be deemed a success, the real challenge is to provide permanent and sustainable livelihoods for the settlers.¹²⁹ Furthermore, nowadays, even the island of Sagar is susceptible to climate change, as the sea level rises 21mm annually, and therefore any resettlement programs may be deemed temporary in light of such natural circumstances.

2.2.2. Alaska

Climate change transforms the north poles ecosystem to an extent that they make indigenous communities as a whole, vulnerable to climate change, on the coast of Alaska, as well as on the internal rivers. Humanitarian disaster relief in Alaska focuses on immediate and emergency disaster relief, and damage control, however local authorities, even with a multi-million budget are unable to protect the local communities with classis land and flood relief.¹³⁰

¹²⁸ Gromilova p.75

¹²⁹ Gromilova. 75

¹³⁰ Bronen, R.: *Climate-induced community relocations: Creating an adaptive governance framework based in human rights doctrine*, N.Y.U. Review of Law and Social Change, (2011) 35(2): 357-362

Since 1978, out of the 228 floods in Alaska, 119 were declared to be a flood control areas, where indigenous people leading traditional lifestyles have lived.¹³¹ Moreover 40% of these floods happened between 2000 and 2008, and 23 of those happened only in the 2005 year.¹³² The increasing average temperature, the retreating permafrost, and polar ice cap, many indigenous persons decide to relocate. However, to implement this relocation, an well-orchestrated comprehensive state intervention is necessary, which is hindered by numerous factors. For one, no state or local authority has the legal authority to organise or manage such relocations. Secondly, no state or local authority has the budget to conduct such relocations. And finally, it is incredibly difficult to establish and prioritize such areas which are the most vulnerable to climate change.¹³³ According to Bronen, we must not only consider climate change as a factor for relocation but also the vulnerability of social, economic and political structures must be taken into account.

The relocations were carried out based on the request of the affected communities. Their request also included that in case of Newtok, the new location should only be a couple of kilometers from the original location, still within the area that the local community is culturally a part of and the community remains intact, and that the shouldn't have to give up their traditional lifestyles.¹³⁴ The relocation was a success.

As the Paris Agreement declares, adaptation measures should also include adaptation to the response measures, which must be guided by the human rights based approach as well. Human mobility may be due to the effects of combatting climate change through for example reforestation and afforestation. Indigenous peoples have been forced to leave their territories for the purposes of nature preservation while creating a national park.¹³⁵

2.2.3. The Small Island States in the Pacific

According to the Asian Development Bank, the IPCC predicts an increase of 1 grade celsius on average, however this is estimated to be 4-6 grades in the Pacific.¹³⁶ The average temperature increase results in the biophysical processes, which manifests in quick and slow onset natural disasters. Additionally, Kiribati is above the so-called hurricane belt but in 2015 the Pam cyclone went higher North than expected and flooded the Southern areas of

¹³¹ Bronen (2011) p. 360

¹³² Bronen (2011) p. 361

¹³³ Bronen (2011) p. 360

¹³⁴ Alaska: When the Water Took the Land / Fault Lines (https://www.youtube.com/watch?v=1_KynXCN3c4 Letöltve: 2021.06.30.)

¹³⁵ Prieur p.3

¹³⁶ Asian Development Bank (2017)

Vanuatu, Tuvalu, and the Gilberts islands. Not only do these states lose some of their territories but the local population is displaced or their livelihood is endangered on the remaining land. In addition to these circumstances, the expenses on disaster relief will increase significantly and will necessitate a permanent allocation in their national budgets, hindering the development of these developing economies.

As explained earlier, human mobility is a means of adaptation and can even be a long-term strategy. And although Fiji has not yet included relocation as a potential means of adaptation in their National Climate Change Policy, they have implemented such measures before.

Initially, the village of Vunidogoloa, composed of 26 houses, lay a few meters from the coast of Vanua Levu, in North Fiji. Year after year the village was isolated from its surroundings by bigger and longer floods and although the houses were built on pillars, the water damaged them regularly. The community gardens became increasingly difficult to maintain because of the salt water inundation, as the dike became useless.¹³⁷ The villagers turned to the state of Fiji in 2007, and requested financial aid to relocate. In 2014, the whole village of Vunidogoloa was moved two kilometers from its original location. This relocation was organised with the full consent and cooperation of the local persons of concern, and took into consideration the local cultural ties to the area and even former neighbours. In effect, this meant that a safe location close to the original geographical position of the village was selected, which still belonged to the same cultural group, and thus were moved next to a population belonging to the same cultural traditions, making their integration easier. Moreover, in this new village, the houses were constructed from the same local wood, and were built in the exact same position to each other as in the original village, thereby maintaining the community cohesion.

The key to the success of such relocation is the willingness of the concerned, and the incorporation of all relevant stakeholders, the displaced, the state, the local authorities as well as the host community, in the planning and execution of this project. Another key aspect is to ensure the sustainable livelihood of the population of concern in the new location. In order to cater for the labour needs and to ensure food security of the newly locals, the state and local organisations planted fisheries, banana and pineapple plantations. These new types of making a living required newly acquired skills of the relocated population, which was served by trainings. Therefore not only did the geographical position of this village change

¹³⁷ MCNAMARA, K.E. - DES COMBES, H.J.: *Planning for Community Relocations Due to Climate Change in Fiji*. International Journal of Disaster Risk Science 6, 315–319 (2015). <https://doi.org/10.1007/s13753-015-0065-2>, 316

but also the lifestyle of its inhabitants. Although the case of Vunidogoloa is a success, McNamara maintains that the psychological, social and financial costs of such a massive relocation project is significant. Therefore this option must be a last resort.¹³⁸ According to McNamara's and Des Combes' estimates, there are another about 42 communities affected in the same way in Fiji alone. So the government and international organisations such as the Red Cross and UN Habitat maintain that this is a last resort, not the solution to the problem. They warn that such relocation attempts may be abused by governments.¹³⁹

According to Bronen, relocation is „a process whereby a community's residents, housing and public infrastructure are reconstructed in another location”.¹⁴⁰ Bronen actually calls for the creation of a specific human rights instrument to protect the rights of those living in communities that are no longer habitable due to climate-induced ecological change. This is compelled by the fact that (1) nation-state governments have a duty to protect populations that reside within their jurisdiction, (2) international refugee law does not provide human rights protections for planned community relocations, (3) relocation human rights guidelines must ensure the protection of collective rights because climate change impacts the habitability of entire communities whose residents will be forced to relocate permanently, and (4) the human rights of host communities must also be protected.¹⁴¹ As a non-legally binding document however, the UN Guiding Principles on Internal Displacement provides recommendations on guarantees to be provided, if displacement occurs in situations other than during the emergency stages of armed conflicts and disasters.¹⁴²

Schade argues that planned relocation in the context of natural disasters and climate change can be a preventive measure and a response to displacement caused by a natural disaster.¹⁴³ However, Schade also warns that it should not be confused in principle and during its implementation with the measures to remove people from project zones as 'involuntary resettlement'.¹⁴⁴ Generally, planned relocation is known to cause severe livelihood stress with high risk of infringing human rights. In fact, forced evictions constitute a „gross violation of human rights”, unless carried out for a democratic purpose and in conformity with the

¹³⁸ MCNAMARA - DES COMBES: i.m. 317

¹³⁹ Bronen (2011), p. 318

¹⁴⁰ Robin Bronen: The human rights of community relocation In: Dimitra Manour – Andrew Baldwin – Dug Cubie – Anja Mihr – Teresa Thorp (eds.): Climate Change, Migration and Human Rights. Routledge, 2017. p.130

¹⁴¹ Bronen (2017) p.135

¹⁴² UN Guiding Principles on Internal Displacement, Principle 7 art (3)

¹⁴³ Schade p. 149

¹⁴⁴ Schade p. 150

international covenants on human rights. Nevertheless, planned relocation is a means to avoid situations of protracted displacement¹⁴⁵

2.3. TEMPORARY PROTECTION IN RESPONSE TO THE 2010 HAITI EARTHQUAKE

On 12 January, 2010 Haiti was shaken by the single most severe earthquake ever recorded in the island's history. The earthquake occurred 25 kilometres from Port-au-Prince and for another week, more aftershocks shook the western part of the island, which were felt even in Cuba and Venezuela.¹⁴⁶ The capital and its surrounding areas lie right at the confluence of two rock plates and is a swampy area, crossed by rivers running into nearby estuaries.¹⁴⁷ The rate of annual deforestation in the region is 3%, which can be traced back to historical and political reasons as well as current local energy needs. Due to its natural resources, the sudden opening of markets and outdated agricultural practices, Haiti is one of the most insecure countries in terms of food security, just ahead of the Democratic Republic of the Congo and Eritrea. Although the country is regularly affected by natural disasters – such as floods, droughts, earthquakes, extreme storms – due to its turbulent colonial past and subsequent civil wars, the country's resilience and disaster protection are virtually non-existent. This particular natural disaster affected around three million people, in a country which is the poorest in the Western Hemisphere. It is estimated that a quarter of a million people lost their lives, three hundred thousand were injured and one and a half million were forced to seek refuge in camps set up for those displaced.¹⁴⁸ Consequently, a cholera epidemic also broke out in Haiti in October 2010.¹⁴⁹

The way and the extent to which environmental degradation contributes to the most recent migration trends and refugee crises is currently under research. Considering the case of Haiti, according to Audebert, it can be established that the demographic pressures on

¹⁴⁵ Simperingham, Ezekiel: State responsibility to prevent climate displacement - The importance of housing, land and property rights In: Dimitra Manour – Andrew Baldwin – Dug Cubie – Anja Mihr – Teresa Thorp (eds.): Climate Change, Migration and Human Rights. Routledge, 2017. p.90

¹⁴⁶ This day: Massive earthquake strikes Haiti (<https://www.history.com/this-day-in-history/massive-earthquake-strikes-haiti>) (7 December, 2020))

¹⁴⁷ Overview of the Haiti Earthquake (<https://escweb.wr.usgs.gov/share/mooney/142.pdf>) (20 December, 2020))

¹⁴⁸ World Vision: 2010 Haiti earthquake: Facts, FAQs and how to help (<https://www.worldvision.org/disaster-relief-news-stories/2010-haiti-earthquake-facts>) (7 December, 2020))

¹⁴⁹ Planting Now: Agricultural challenges and opportunities for Haiti's reconstruction, Oxfam Briefing Paper, October 2010 (https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/file_attachments/bp140-planting-now-agriculture-haiti-051010-en_0_4.pdf) (2020. december 7.))

scarce land resources in rural areas as well as the extension of erosion aggravate the living conditions among agricultural workers which is then coupled with rudimentary agricultural practices. These eventually lead to the contraction of arable land and the reduction of agricultural resources. This directly causes the impoverishment of masses, which, if not met with adequate political will to resolve the situation, may cause social tension and even violent conflicts. Moreover, climate change causes extreme weather conditions which makes certain areas in the world such as Haiti extraordinarily vulnerable to environmental disasters. Additionally, taking into account the colonial exploitation, the military dictatorship and the overall political and economic instability throughout the past decades, Audebert claims that all of these insecurities create a „multidimensional vulnerability” for people living in places such as Haiti.¹⁵⁰ Consequently, immigration authorities face quite a challenge when trying to legally distinguish asylum-seekers from economic migrants.

In this section I will not focus on the causes but on the consequences: the wave of human mobility experienced after the earthquake and the legal responses to accommodate the influx of Haitians given by the countries of destination. It is estimated that there were as many as 700,000 displaced in Port-au-Prince alone. Almost 600,000 are thought to have had to relocate to areas outside the capital. Displaced populations and migration was a challenging issue both within Haiti (with more than 1.2 million people displaced) and internationally, as people were leaving Port-au-Prince for unaffected rural areas, as well as the Dominican Republic, North America as well as South America.¹⁵¹

In the following, I will collect the legal responses of a number of countries on the American continent to the influx of Haitian migrants following the earthquake in Port-au-Prince, Haiti in January 2010. I will assess domestic immigration policies from the following two aspects: a) how prepared was the country to receive the displaced in terms of already available legal status and therefore protection, and b) how flexible were their legal regimes in order to accommodate a sudden influx of people, either temporarily or permanently. The countries that I will study and assess are the main economies of the continent. Traditional countries of destination in America include the United States of America, Canada, Mexico and Venezuela. The emergence of Brazil as a regional power, and the opportunities on the labour market for Haitians makes Brazil a new but significant country of destination.¹⁵² The

¹⁵⁰ Audebert, Cedric: The recent geodynamics of Haitian migration in the Americas: refugees or economic migrants? *Revista Brasileira de Estudos de População* vol. 34. no. 1., São Paulo, Jan/Apr. 2017

¹⁵¹ Margesson, Rhoda & Taft-Morales, Maureen: Haiti Earthquake: Crisis and Response, Congressional Research Service, CRS Report R41023, 8 March, 2010 p.25.

¹⁵² Audebert p.2

aim of the country assessments are to uncover any inconsistencies in terms of the migration management of ad-hoc and large influxes of people.

2.3.1. The Dominican Republic

I start my analysis with the only country with which Haiti shares a land border with. Today the island is divided between and shared by the Dominican Republic and Haiti. Historically, this division is a legacy of colonial times, therefore the relationship between the two - culturally very different – countries has been gruesome since their independence. This bloody rivalry is exactly why the Dominican Republic enacted no national special measures for Haiti nationals, even though thousands of Haiti nationals sought refuge just over the border. Although the Guiding Principles on Internal Displacement from 1999, also covers victims of natural disasters, not just violent conflicts, these do not apply to persons displaced cross-border. The Dominican Republic only participated in Assisted Voluntary Return programs led by the International Organisation for Migration (IOM) through which more than 1000 Haitian nationals were returned in 2011 already.¹⁵³

2.3.2. Canada

Natural disasters hit immigration systems in various ways. Since the Embassy of Canada in Port-au-Prince was damaged in the earthquake, the Citizenship and Immigration Commission of Canada (CIC) had to establish an interim office, the Ottawa Haiti Processing Office (OHPO), while the Embassy of Canada in Santo Domingo, Dominican Republic took over and processed temporary resident visa applications from applicants from the Dominican Republic and Haiti.¹⁵⁴

Asylum-seekers and immigrants entering Canada are entitled to various legal statuses based on the Immigration and Refugee Protection Act of 2001.¹⁵⁵ However, since this did not provide adequate protection to those Haitians coming to Canada, on 16 January, 2010, the CIC announced the Haiti Special Measures (HSM) providing „special priority processing measures for persons who self-identified as being directly and significantly affected” by the earthquake in Haiti. At the end of the procedure, the CIC provided the applicant with the appropriate document, which was either a) a temporary resident visa; b) a temporary resident

¹⁵³ Wooding, Bridget: L'évolution des relations entre Haiti et la République dominicaine après le séisme de 2010, *Outre-terre*, 2013 no. 35-36, pp. 251-259. p.256

¹⁵⁴ <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/visa-immigration-services-offered-santo-domingo-port-spain.html> (1 May, 2021)

¹⁵⁵ Audebert p.2

permit; c) a permanent resident visa; or a negative decision. Cases not covered under HSM, were to lose priority and were to be processed at a later date. The special measures ended on 31 August, 2010 but Haitian applications were still processed as quickly as possible. Moreover, by 2014, Haitians who were legally present in Canada prior to 13 January, 2011 but made an application for a work permit after 13 January, 2011, benefitted from exemptions based on the HSM.¹⁵⁶

Along with the HSM, a temporary suspension of removals (TSR) was also introduced. Those who were eligible to be removed, could apply for permanent residence on „Humanitarian and Compassionate grounds” on or before 1 June, 2015 to remain in Canada. However, due to improved conditions in Haiti – alleged by the Canadian Government -, on 1 December, 2014, the Government of Canada lifted the TSR. Thus, if a person was found ineligible to make a refugee claim, was inadmissible on criminal or security grounds, or who had been excluded from refugee protection by the Immigration and Refugee Board based on the exclusion clauses of the Refugee Convention, or who faced an outstanding criminal warrant, could be removed from Canada once again.¹⁵⁷ Additionally, the autonomous Province of Quebec also introduced new regulatory measures to facilitate sponsorship of people who were seriously and personally affected by the earthquake in Haiti. The ‘Parrainage Humanitaire’ program allowed (Haitian) Quebec residents to sponsor applications for a permanent resident visa for also siblings and non-dependent children over the age of 22 and their accompanying family members.¹⁵⁸ Due to these special measures introduced by the Canadian governments, the number of Haitian asylum-seekers tripled after the earthquake between 2010 and 2014, and Canada became the world’s second largest host of Haitians refugees (8400) in 2014.¹⁵⁹

2.3.3. United States of America

The United States of America remained the number 1 host of Haitian refugees in the world during and after the 2010 Haiti earthquake.¹⁶⁰ The immigration of Haitians into the USA has always been balancing on the verge of legal and illegal, which is why as a predecessor of the

¹⁵⁶ <http://ccrweb.ca/sites/ccrweb.ca/files/haiti-zimbabwe-special-measures-jan-2015-presentation.pdf> (1 May, 2021) p.4

¹⁵⁷ <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/reminder-people-haiti-zimbabwe-affected-lifting-temporary-suspension-removals.html> (1 May, 2021)

¹⁵⁸ <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/update-haiti-immigration-figures-december-31-2010.html> (1 May, 2021)

¹⁵⁹ Audebert p.2

¹⁶⁰ Audebert p.3

Temporary Protected Status, the USA introduced a „hybrid legal category” to regulate these migrants, called the ‘Cuban Haitian Entrant Status’. As suggested by its name, in 1980, the United States hoped to regularize the status of those massive numbers of Cubans and Haitians, who entered the US irregularly usually through the Florida shores by boat.¹⁶¹ Since 2000, the people on a temporary status could receive a permanent residence permit based on the 1998 Haiti Refugee Immigration Fairness Act.¹⁶² Building on the decade long experiences of immigration, within days of the earthquake, the Department of Homeland Security (DHS) was quick to react to the potential influx of Haitian people due to the natural disaster by pledging to grant Temporary Protected Status (TPS) to Haitians in the United States.

The TPS was more or less a blanket form of ad-hoc humanitarian relief, providing protection and legal status to those, who otherwise would not fit the legal definition of refugee but are nonetheless fleeing – or reluctant to return to – potentially dangerous situations. The TPS was instated by the 1990 Immigration Act, which specifies that the secretary of the DHS, in consultation with other government agencies (i.e. the Department of State), may designate a country for TPS under one or more of the following conditions: (a) ongoing armed conflict in a foreign state that poses a serious threat to personal safety; (b) a foreign state request for TPS because it temporarily cannot handle the return of nationals due to environmental disaster; or (c) extraordinary and temporary conditions in a foreign state that prevent migrants from safely returning.¹⁶³ It was the Secretary of DHS who could issue TPS for periods of 6 to 18 months and these could be extended if conditions do not change in the designated country.¹⁶⁴ Initially, the TPS for Haitians was valid for 18 months¹⁶⁵ but after the earthquake, the term of the granted TPS was extended multiple times.¹⁶⁶ In November 2017, under the Trump administration’s guidelines, the DHS announced its decision to terminate the TPS regarding Haiti, with an 18-month transition period and thus Haiti’s designation ended on 22 July, 2019.¹⁶⁷

It must be noted that TPS-holders were not considered to be permanently residing in the United States, they may have been deemed ineligible for public assistance by a state, and

¹⁶¹ Audebert p.2.; Wilson, Jill H.: Temporary Protected Status: Overview and Current Issues, Congressional Research Service, CRS Report, 17 January, 2018 p.32.

¹⁶² Audebert p.3

¹⁶³ A state may not be designated for TPS if the Secretary of DHS finds that allowing its migrants to temporarily stay in the United States is against the U.S. national interest. Wilson p.2

¹⁶⁴ Wilson p.2

¹⁶⁵ Wilson p.31.

¹⁶⁶ Wilson p.32

¹⁶⁷ Wilson p.7

may have travelled abroad only with the prior consent of the DHS Secretary.¹⁶⁸ The TPS recipients were also eligible for federal benefits and cash assistance much like refugees. The newly arriving Haitians however were barred from the major federal benefits and cash assistance for the first five years after entry.¹⁶⁹ TPS did not provide a path to lawful permanent residence or citizenship, unlike the abovementioned statuses, however TPS recipients were not barred from adjusting to non-immigrant or immigrant status, if they had met the requirements.¹⁷⁰

In addition to the TPS, there was another form of blanket relief from removal known as deferred enforced departure (DED), which was a temporary, discretionary, administrative stay of removal granted to aliens from designated countries. The DED is usually granted through an executive order or presidential memorandum, with no statutory basis, at the President's discretion, usually in response to war, civil unrest, or natural disasters. In 2010, the DHS also halted temporarily the deportation of Haitians from the US.¹⁷¹ In contrast to recipients of TPS, migrants who benefit from DED were not required to register for the status, unless they wanted a work permit. Instead, DED was triggered when a protected migrant had been identified for deportation.¹⁷² In 2011 though, „removals on a limited basis of Haitians with final orders of removal and convicted of a serious crime, or who posed a national security threat” resumed. In 2016, the Obama administration issued a DED with immediate effect, and thus the DHS resumed, consistent with law, „the removal of convicted felons, individuals convicted of significant or multiple misdemeanours, and individuals apprehended at or between ports of entry while attempting to unlawfully enter the United States”. The deportations did not affect the TPS holders, especially if they continually resided in the US. However, those who expressed a fear of return to Haiti were screened by a U.S. Citizenship and Immigration Services (USCIS) asylum officer to determine whether they possess a credible fear of persecution or torture. Those determined to have a credible fear were referred to immigration court for removal proceedings where they could apply for asylum or other forms of relief.¹⁷³

It must also be mentioned that both the governments of Canada and the USA gave priority and granted entrance on humanitarian grounds (humanitarian parole) to Haitian

¹⁶⁸ Wilson p.3

¹⁶⁹ Wilson p32

¹⁷⁰ Wilson p.13

¹⁷¹ Wilson p31.

¹⁷² Ibid p.3

¹⁷³ <https://www.dhs.gov/news/2016/09/22/statement-secretary-johnson-concerning-his-directive-resume-regular-removals-haiti> (1 May, 2021)

children who were legally confirmed as orphans eligible for intercountry adoption by the government of Haiti and who were in the process of being adopted by U.S. or Canadian residents, respectively, prior to the earthquake.¹⁷⁴

2.3.4. Mexico

According to the Jesuit Refugee Service in Latin-America and the Caribbean, although the Mexican government was quick to express solidarity on a political level, president Calderón failed to keep his promise of any special legal assistance to Haitian asylum-seekers.¹⁷⁵ Haitian nationals in the aftermath of the earthquake could apply for a „regular” temporary visa on humanitarian grounds for up to 1 year, subject to renewal.¹⁷⁶

Most of the Haitians registered at the southern borders of Mexico, in particular in Tapachula, Chiapas, according to the National Institute of Migration and stayed at refugee camps (Estación Migratoria) provided by the government.¹⁷⁷ Since initially, Mexico was a country of transit for Haitian migrants moving to the USA or Canada, the undersecretary for Population, Migration and Religious Affairs of the Federal Ministry of Interior at the time stated that although under normal circumstances an irregular migrant would have 20 days to leave the country, Mexico will not deport Haitians until they receive their legal documents to enter the United States.¹⁷⁸ However, after the abovementioned withdrawal of the temporary protected status in the USA, more than 4000 applications seeking asylum or humanitarian protection were submitted in Baja California in February 2016 alone.¹⁷⁹ As Mexico experienced a large influx of irregular migrants in 2015, which led to a crisis similar to the EU’s refugee crisis, Haitian nationals received no special treatment moving forward.

2.3.5. French Guiana

French Guiana is a traditional destination in terms of Haitian emigration, since its franco-phone and an overseas department of the Republic of France. However, in the 2000s, Guiana

¹⁷⁴ <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/update-haiti-immigration-figures-december-31-2010.html> (1 May, 2021); Wilson p. 31

¹⁷⁵ https://www.entreculturas.org/files/documentos/estudios_e_informes/Flujos%20haitianos%20haciaAL.pdf (10 August, 2021) p. 4

¹⁷⁶ <https://www.gob.mx/inm/documentos/preguntas-frecuentes-para-solicitar-el-cambio-a-visitante-por-razones-humanitarias> (1 May, 2021)

¹⁷⁷ https://www.gob.mx/cms/uploads/attachment/file/281220/Informe_Caso_Haitianos_y_Africanos.pdf (1 May, 2021) p.1

¹⁷⁸ <https://expansion.mx/nacional/2016/10/10/la-tragedia-que-persigue-a-los-haitianos-hasta-mexico> (1 May, 2021)

¹⁷⁹ <https://www.gob.mx/inm/documentos/preguntas-frecuentes-para-solicitar-el-cambio-a-visitante-por-razones-humanitarias> (1 May, 2021)

has virtually closed its borders to immigrants, and, in 2010, President Sárközy asked neighbouring Suriname to do the same. Consequently both countries started issuing transit visas, as well as temporary residence visas to asylum-seekers, and as a result French Guiana (and Suriname) became a transit country on the way to Brazil.¹⁸⁰

Between 2010 and 2015 only 4,5% of the applicants were finally granted asylum in France. However, over half of the applicants for refugee status received subsidiary protection from France.¹⁸¹ Under the so-called Qualification Directive of the EU, subsidiary protection may be granted to a person, who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to their country of origin would face a real risk of suffering serious harm, and is unable or, owing to such risk, unwilling to avail themselves of the protection of that country.¹⁸² The devastation caused by a natural disaster may be considered such a serious harm, however EU member states have implemented and applied this Directive rather conservatively under normal circumstances.

2.3.6. Brazil

Although as mentioned above, Brazil had not been a traditional country of destination for Haitian migrants before 2010, it became the top country of destination by 2016.¹⁸³ Most Haitian nationals arriving after the earthquake applied for refugee status. At first, in 2010, they received a temporary, asylum-seeking status until a final decision as Haitians entering Brazil in the aftermath of the earthquake did not specifically meet the requirements of the Geneva Convention on Refugees. The government thus provided Haitian applicants with a work permit and fiscal credentials necessary under Brazilian law to legally stay in Brazil as an immigrant. However this practice was suspended in February 2011.¹⁸⁴

Those who did not get a legal status, remained in the country though and so the National Immigration Council recommended to the Ministry of Employment in March 2011, to provide Haitians with a residence permit on humanitarian grounds. In January 2012, the National Immigration Council created a permanent visa for humanitarian reasons by

¹⁸⁰ Handerson, Joseph: The Haitian migratory system in the Guianas: beyond borders. *Diálogos*, Maringá-PR Brasil, v. 24. no. 2., pp. 207-209

¹⁸¹ Audebert, p. 6

¹⁸² https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/subsidiary-protection_en (10 August, 2021)

¹⁸³ https://robuenosaires.iom.int/sites/default/files/publicaciones/Diagnostico_Regional.pdf (1 May, 2021)

p.48

¹⁸⁴ https://www.entreculturas.org/files/documentos/estudios_e_informes/Flujos%20haitianos%20haciaAL.pdf (10 August, 2021) p. 2

Normative Resolution No. 97/2012 for five years. The annual quota was 1,200 visas (100 per month), which did not include applications for visas on the grounds of family reunification.¹⁸⁵ Initially, the resolution should have been in force for only two years, but the program has been extended annually from 2012 to 2016. Altogether throughout the years 48,000 applications were successful, a refugee crisis unfolded at the Brazilian borders due to the various forms of illegal facilitation of migration.¹⁸⁶ One of the key requirements of the applicants that were put in place was that such a visa application could only be filed in person to the Brazilian consulate in Port-au-Prince. The Brazilian consulate was overloaded by work, which slowed down the whole process, and a waiting list had to be drawn up. For those that were already in the country, the granting of humanitarian visas were to remain for „special cases” but were mostly left without a case in the eye of the authorities.¹⁸⁷ To ease the crisis, by April 2013, the Brazilian government decided to issue Normative Resolution No. 102/2013, which (i) revoked the limit of a 100 visas per month; (ii) struck the requirement that humanitarian visas must be submitted to the consulate in Port-au-Prince and thus these could also be processed in Ecuador, Bolivia, and the Dominican Republic, among others.¹⁸⁸ To finally resolve the crisis, under Normative Resolution No. 27/1998, 50 000 undocumented Haitians were granted permanent residence in Brazil.¹⁸⁹

2.3.7. Chile and Ecuador

Chile and Ecuador are the gates of the Caribbean in terms of South-to-South migration trajectories, therefore these usually serve as transit countries for immigrants. According to IOM, no special measures were enacted regarding the Haitian environmental migrants.¹⁹⁰ However due to existing liberal, employment oriented immigration regulations, in the first three months of 2011, the number of Haitians entering Chile and Ecuador was equal to the number of Haitians entering in 2009 in total.¹⁹¹

In Chile, a very favourable alien law in force was enacted in 1975 under Pinochet (Presidential Decree Act No. 1094). Initially, the law linked the only available visa for employment to a single employer, who also had to commit to pay to transfer the immigrant

¹⁸⁵ Wilson p.64

¹⁸⁶ Audebert p. 3

¹⁸⁷ Wilson p.65

¹⁸⁸ Wilson p. 66

¹⁸⁹ Audebert p. 4

¹⁹⁰ https://robuenosaires.iom.int/sites/default/files/publicaciones/Diagnostico_Regional.pdf (1 May, 2021)

p.48

¹⁹¹ https://www.entreculturas.org/files/documentos/estudios_e_informes/Flujos%20haitianos%20haciaAL.pdf (10 August, 2021) p. 2

from their country of origin to Chile. In case of the termination of employment, the immigrant had to leave the country within 30 days. In April 2015, a new temporary visa for employment was enacted, which allowed immigrants to enter the country with an already executed employment contract or even a job offer for a duration of one year, with the possibility that if the employment was not executed or was terminated, the immigrant may look for a new job within the duration of their work visa.¹⁹²

Ecuador enacted a visa waiver for nationals of Latin-American and Caribbean countries already in 2008, which meant that Haitians could enter with a 90-day tourist visa any time to look for work, even before the earthquake. As a response to the aftermath of the natural disaster, in February 2010, Executive Decree No. 248 declared the regularisation of irregular immigrants, such as Haitians displaced by the earthquake, as well as their spouses and their children.¹⁹³

2.3.8. Argentina

Just like in Ecuador, under normal circumstances, Haitians enjoy visa free entry to Argentina, however at the border control entrants may be asked to present documents proving their purpose of „tourism” and may be rejected if such documents are not produced.¹⁹⁴ Any alien in Argentina may apply for the following three temporary regular status: work visa, student visa, and visa for humanitarian reasons¹⁹⁵. Residence for humanitarian reasons is granted by the National Migration Directorate, who decide whether the applicants are entitled to such special treatment. According to the National Migration Directorate, Haitian applicants were to be granted such status as subsidiary means, meaning that applicants are granted temporary residence on humanitarian grounds, unless they are entitled to refugee status based on their asylum claims. Much like the Eu’s subsidiary protection status under the above mentioned Qualifications Directive. According to the National Migration Directorate 1482 Haitian nationals applied for temporary residence and 408 for permanent residence between 2010 and 2016.¹⁹⁶ After three years of continuous residence in the country, temporary residence holders could apply for permanent residence.¹⁹⁷

¹⁹² Wilson p.92

¹⁹³ Audebert p.6

¹⁹⁴ Such documents are: hotel reservation, or invitation letter from a specific person in Argentina, and in some cases an amount of approximately 1000 USD that can cover the stay in Argentina. Wilson p.117

¹⁹⁵ According to art. 23 of Act No. 25,871 and Regulatory Decree No. 616/2010.

¹⁹⁶ Wilson p.109

¹⁹⁷ *ibid* p. 116

The National Migration Directorate also approved a – duty-free - special mechanism to facilitate the regularization of migration for humanitarian reasons for Haitian nationals. This special regime allows for Haitian nationals to be granted a temporary residence for 2 years, who hold ordinary passports, who entered Argentina as tourists before 1 March, 2017 and are not entitled to any other grounds for immigration. The special mechanism was enacted for a temporary period of 6 months from 15 March, 2017. According to the Ministry of Interior, this special mechanism was enacted explicitly to assist the survivors of the 2010 earthquake.¹⁹⁸

Conclusions

The analysis of the domestic legal responses of the receiving countries in the region to the influx of Haitian nationals displaced by the 2010 earthquake is summed up in the following table:

Receiving country	Refugee status	Special legal status	Special procedural measures	Ordinary legal status on humanitarian grounds	In-kind provisions
Canada	No	No	Yes	Yes	n/a
USA	No	Yes	No	No	Yes
Mexico	No	No	No	Yes	n/a
French Guiana	No	No	No	Yes	n/a
Brazil	No	Yes	No	Yes	n/a
Chile	No	No	No	No	n/a
Ecuador	No	No	No	No	n/a
Argentina	No	Yes	No	Yes	n/a
Dominican Republic	No	No	No	No	Yes

Table 2: Legal responses for migration induced by the 2010 Haitian earthquake on the American continent

¹⁹⁸ http://www.migraciones.gov.ar/accesible/indexA.php?mostrar_novedad=3427 (1 May, 2021)

Firstly, in terms of country of destination, it may be established that those displaced by the earthquake or circumstances of its aftermath headed for traditional countries of destination, with the exception of Brazil, which has emerged as a regional economic power during the aftermath of the natural disaster. Therefore it is virtually impossible to distinguish an economic migrant from an environmentally displaced person, due to the fact that once a person is compelled to move away from their home, they will go somewhere where their livelihood is best ensured.

Secondly, in terms of dealing with a sudden influx of displaced persons, the host countries implemented ad hoc measures to swiftly deal with the influx: some countries opted for a temporary legal status aiming to help for a limited time period at their own discretion, not granting permanent residence, while some other countries recognized the economic benefits of a potential work force and provided an avenue to permanent residence, while a very few receiving states almost pushed people over their borders to other countries with transit visas in order to avoid even the temporary settlement of those displaced. In addition, most of the assessed domestic immigration standards do not adequately reflect the diverse means and motivations of international mobility, ie. the consequences of the above mentioned multidimensional quality of human insecurity in places such as Haiti. Therefore current immigration regimes either prescribe oversimplifying standard legal categories such as the refugee status, or apply a blanket form of relief for the complex man-made or naturally occurring circumstances inducing human mobility, such as the humanitarian visa.

Finally, referencing the Geneva Convention on Refugees, no country has provided refugee status to Haitian nationals, and while that may be correct under the strict application of international law, some form of subsidiary protection is necessary for persons who are unable to return to their homes due to the serious harm that they face at home. As mentioned above, although the Cartagena Declaration would allow a signatory to include natural disasters as a ground for granting asylum to an applicant, up until today no signatory state has enacted domestic laws to implement this provision, and this also explains why none of the receiving states has provided refugee status to those displaced due to the Haiti earthquake. In fact, although the IOM acknowledges the term „environmental migrant”¹⁹⁹, and the UN Guiding Principles on Internal Displacement also references „environmentally displaced

¹⁹⁹ Environmental migrants are persons or groups of persons who, predominantly for 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 choose to do so, either temporarily or permanently, and who move within their country or abroad. <https://environmentalmigration.iom.int/environmental-migration> (1 May, 2021)

persons”²⁰⁰, these working definitions haven’t been implemented - neither in domestic legal systems, nor in international conventions, with a legally binding effect.

Although ten years on, the crisis seems to have been resolved effectively, with the onset of climate change and the increased frequency and intensity of prospective natural disasters, in the region and around the world, a more long-term vision and standard legal regime should be implemented by the international community as a whole for the future. In order to avoid situations where displaced persons are left in limbo and without protection, international coordination should be enhanced with international conventions regulating the legal status and the protection to be enjoyed by those who are displaced due to environmental degradation. Although not calling for a convention per se, the need for enhancing information collection and sharing and coordination of actions is reflected in the United Nations’ *Global Compact for Safe, Orderly and Regular Migration*, therefore negotiations on a regional level, within the Framework of the Organisation of American States should commence to encourage the implementation or the improvement of the Cartagena Declaration.

Although this analysis assesses the migratory experiences of a decade old natural disaster, the relevance of the potential lessons learned is as topical as ever. Haiti continues to be in a political turmoil with the assassination of President Jovenel Moïse on 7 July, 2021²⁰¹, and as mentioned above, Haiti continues to experience frequent natural disasters, the latest being a 7.2-magnitude earthquake in mid-August, 2021²⁰². Since Haitians still face a severe human insecurities, it is likely that the migration implications discussed in this paper will be repeated.

2.4. INTERNATIONAL PROTECTION FOR VICTIMS OF ENVIRONMENTALLY INDUCED VIOLENT CONFLICTS

By now many scholars now accept that climate change imposed a pressure on the Syrian crisis.²⁰³ Droughts exacerbated by climate change put pressure on water resources, destroyed crops, killed livestock, created food insecurity, displaced Syrian farmers, creating economic

²⁰⁰ Persons who are displaced within their country of habitual residence or who have crossed an international border and for whom environmental degradation, deterioration or destruction is a major cause of their displacement, although not necessarily the sole one. This term is used as a less controversial alternative to environmental refugee or climate refugee that have no legal basis or *raison d’être* in international law, to refer to a category of environmental migrants whose movement is of a clearly forced nature. <https://environmental-migration.iom.int/environmental-migration> (1 May, 2021)

²⁰¹ <https://www.bbc.com/news/world-latin-america-57762246> (10 August, 2021)

²⁰² <https://reliefweb.int/report/haiti/haiti-earthquake-flash-update-no-1-15-august-2021> (15 August, 2021)

²⁰³ Thorp p. 78

insecurity, urbanisation and inadequate urban planning created a political insecurity.²⁰⁴ Thereby climate change contributed to the transformation of a social and political crisis into armed violence. As a result of this armed conflict and the persecution that was associated with it, since 2011 14 million Syrians fled Syria and 6,8 million remain internally displaced.²⁰⁵ Syrian asylum-seekers during the war and to a more limited extent have been granted refugee status and international protection or subsidiary protection.

Climate change also disrupts traditional migration strategies for pastoral, nomadic livestock breeding communities, in the Sahel region as well as in Mongolia. In Kenya for example the uncontrolled exploitation of natural resources, in a region heavily hit by drought, environmental disasters, as well as weak governance and the influx of refugees from neighbouring countries, is contributing to the transformation of the traditional way of life. The transformation is full of political tension and conflict.²⁰⁶ Although the authors of IPCC report²⁰⁷ establish that climate change was not the primary cause of the Darfur conflict, similarly to Kenya, applying the human security concept as described in the following chapter, to the case of South Sudan, it is quite evident that a link between climate change and the armed conflict may be established. Drought is seen as one of the root causes of the conflict in Darfur. Local intercommunity conflicts over grazing land, natural resources and territory throughout the 20th century prevailed in the region bearing in mind, Sudan's political history and the turmoil of decolonisation coupled with the slow onset, environmental degradation characteristic of the region, or contributed to general instability, and the political violence that followed suit climate shocks and depletion of natural resources, affect the livelihoods and food security of both sedentary and pastoralist, populations, causing displacement and the disruption of traditional pastoralist routes leading to further tension between these two communities.²⁰⁸ Moreover, armed groups of nonstate actors regularly recruit in the refugee camps, providing a larger number of fighters, leading to the escalation of the armed conflict. To date, there 4,2 million persons of concern, of which 3,1 million are internally displaced, primarily cared for by UNHCR and IOM on site, and there are almost 200,000 persons seeking asylum in neighbouring countries. Additionally, there are around 940,000 internally

²⁰⁴ Thorp p. 78

²⁰⁵ UNHCR: Syria Refugee Crisis Explained (14 March, 2023) <https://www.unrefugees.org/news/syria-refugee-crisis-explained/>

²⁰⁶ The Atlas of Environmental Migration p.72

²⁰⁷ Thorp p.78

²⁰⁸ The Atlas of Environmental Migration p.80

displaced persons who have returned to their homes, and there are an additional around 150,000 Sudanese asylum seekers who have returned from neighbouring Chad.²⁰⁹

As Olson explains violence in general may also break out after an environmental disaster as well. In August 2005, New Orleans (USA) was hit by Hurricane Katrina, which resulted in 1,400 deaths, massive flooding and significant loss of property, especially among the poor population. Additionally, the devastation also brought with it a wide-spread violence, looting and vandalism, in which marginalised groups suffered disproportionately. However, when Superstorm Sandy hit New York and New Jersey, causing 130 immediate deaths, the local communities cooperated in relief efforts, and looting and vandalism were rare.²¹⁰ This is a clear example that environmental displacement is caused by multiple factors, which depending on the vulnerability of the persons of concern, sometimes the environmental disaster is the last straw and sometimes it is born well. The empirical evidence shows that social relationships after a disaster may improve but they may also deteriorate. Olsson adds that the severe heatwave in Chicago (Illinois, USA) in July 1995, caused an extreme mortality rate that year, which was partly directly due to the heatwave but the locals who had less access to health and other social services died indirectly of the heatwave as well. As Olsson recalls “the heatwave was also characterised by conflicts and fierce street battles, with news media calling it a ‘water war’”.²¹¹ Heatwaves are associated with a number of social and health-related predicaments such as increasing violence, emotional problems, and low life satisfaction. Urban areas are expected to suffer comparatively more, taking into account the urban heat-island effect.²¹²

2.5. INTERNAL AND INTERNATIONAL (ECONOMIC) MIGRATION

The Food and Agricultural Organisation²¹³ was the first UN body to declare that climate change increases stress on agriculture and all farmers may gradually need to develop new methods of farming. However, there is insufficient capacity for adapting to the gradual change in climate in developing countries. In their report, analysing Mali, Senegal, Ethiopia, Ghana, Tanzania, Argentina, Guatemala, Mexico, Peru, India, Bangladesh, Thailand,

²⁰⁹ <https://reliefweb.int/report/sudan/unhcr-darfur-operation-sitrep-january-2023-enar>

²¹⁰ Olsson p.120

²¹¹ Olsson p.121

²¹² Olsson p. 124

²¹³ FAO-IFAD-IIOM_WFP: The linkages between migration, agriculture, food security and rural development. rome. (<http://www.fao.org/3/ca0922en/ca0922en.pdf> letöltve 2021.05.16.) 6.p.

Vietnam, FAO noticed 'seasonal' or 'circular' migration. This movement from rural and mostly agricultural regions was especially common among young persons, and such temporary movements became permanent emigration trends, as the emigrant farmers had nothing to return to anymore. The FAO, in 2018, established that due to the deterioration of the natural environment, causing the loss of livelihood for the locals, their leaving is involuntary. Moving away from home is the last resort and thus the FAO report calls this „survival migration”. FAO also warns that apart from fleeing the gradually changing climate and even the abrupt negative effects of climate change can be dignified, if the predictable environmental disaster from these places of concern if these movements were „pre-emptive”.²¹⁴ To clarify, such „pre-emptive migration” does not happen fully voluntarily but due to the pressure of external forces.

The World Bank also maintains that migration, in particular emigration, is a defence mechanism, if the individual's aim is to minimize the risk of economic and environmental crisis, as in income-diversification, and survival, in fact. However, the World Bank also highlights that internal or domestic migration is more common than international migration, when it comes to environmentally induced human mobility.²¹⁵ The World Bank has also identified certain migration hotspots. These are points of source of human mobility from a territory of a country or settlements, cities or suburban areas, in particular areas of the country. However, if such hotspots are close to the state borders, than persons of concern naturally may cross the border. This could in-fact be understood as a mobility “spill-over” induced by climate change.

Combining this hotspot analysis with the concept of pre-emptive migration, together these can guarantee the survival of persons of concern. The World Bank also warns that although human mobility may ensure the survival of the population concerned but not all problems are solved with migration. Problems such as adaptive capabilities in the point of destination such as accommodation, financial stability, the lack of social network just like the locals.²¹⁶

I will now present a few concise in-depth analysis of economic migration due to environmental factors.

Urban population has grown rapidly since the 1950s from 746 million people living in cities in 1952 3.9 billion in 2014. today more than half of the world's population lives in

²¹⁴ *ibid.* 27. p.

²¹⁵ Rigaud et al. *idem*

²¹⁶ Rigaud et al.: *idem*

urban areas. The largest cities in the world are concentrated in the global self, and the pace of urbanisation is particularly fast in low- and middle income countries. Unplanned, rapid urbanisation increases local vulnerability as population growth puts additional pressure on the environment, infrastructure and essential services, such as water, sanitation and food provision.

Already strained, city, infrastructures, or further pressured, with a large influx of rural migrants, which causes tension between the local population, and the new arrivals. Social tensions coupled with economic pressures and resource competition transform into political conflict that can turn violent. Many cities also face environmental risks, such as flooding, storms, earthquakes, water, stress or sea-level rise. Poor urban governance and urban planning potentially put all inhabitants at risk, but especially migrants of lower incomes. This group is often extremely vulnerable as they tend to settle in hazard prone, informal or poor quality settlements on the periphery of cities. The magnitude of the problem can be taken into account, if we consider that Latin America and the Caribbean are the most urbanised regions in the world, with 80% of their population living in large cities. Bearing in mind, the cities' vulnerabilities in Latin America, these can also be identified as a climate change hotspot.²¹⁷

While traditionally Peru is a country of destination in terms of human mobility, by the early 2000s, Peru experienced net emigration. Although this emigration has been driven by economic factors and the improvement of domestic economic conditions has reduced the trend in recent years.²¹⁸ Unpredictable rainfall patterns, frost and heatwaves undermine agriculture in Peru's mountainous regions, where locals are largely dependent on agriculture and cattle herding. This leads to food insecurity of the local households and chronic malnutrition, as well as overall poverty. IOM observed that the more remote a village is in the mountains from a city, at higher altitudes for example, the more likely it is for them to engage in long-term migration. Internal migration to the capital city of Peru, and moving to Argentina as well as for three-year contracts to work in the USA as shepherds are just as likely. Families often break up, so that the head of the household may stay in the mountains to take care of the cattle, while the rest of the family moves to the nearest city. Young people are especially likely to settle in a big city. At lower altitudes, may choose daily commute to the city to work, while also managing the family farm. Seasonal migration is also common to seek alternative incomes through coffee harvesting in the Peruvian jungle several months a

²¹⁷ The Atlas of Environmental Migration p.80

²¹⁸ OECD Country Profile Peru (2009) <https://www.oecd.org/dev/americas/44535864.pdf>

year. While young people choose Lima, the USA, Chile, Colombia, Bolivia, Argentina, Uruguay or Italy and Spain for long-term migration, most of them plan to return eventually.²¹⁹ In 2014, 3,5 million Peruvian emigrants were registered, that is 10% of Peru's population at the time. Noticing the volume and the magnitude of this emigration, the Peruvian government initiated bilateral agreements with countries of destination to encourage legal migration routes and to counter human trafficking, and set up various channels of communication and information dissemination to these individual migrants regarding immigration policies and labour market opportunities, among other things.²²⁰ With funds from countries of destination, and international organisations such as IOM, certain countries establish formal, legal channels of regular, circular labour migration. An example of this is the Temporary and Circular Labour Migration Programme²²¹ between Spain (country of destination) and Columbia (country of origin) as a multi-dimensionally vulnerable country suffering from severe environmental risks and environmental degradation, as well as high poverty rates, political conflicts and crime. The Programme provides jobs for 3,000 farmers and indigenous persons from environmentally challenged regions of Columbia for a three year period.

Seasonal and unpredictable precipitation patterns are one of the main reasons for the low agricultural production. According to Urbán, almost half of the African continent is hit by desertification, affecting about 300 million people's livelihoods. Stagnating agricultural and rural development is one of the causes for African emigration, making one of their legitimate survival strategies.²²²

Acknowledging that adapting to the adverse effects of climate change and their social consequences is inevitable, and needs a more institutionalized form of management, New Zealand introduced the so-called Pacific Access Category Resident visa in 2018, which is issued to citizens of Tuvalu (75 visas per year), Kiribati (75 visas per year), Tonga (250 visas per year), and Fiji (250 visas per year). In this way, New Zealand identified highly vulnerable geographical areas within its vicinity, where people will be affected the most and which may serve as countries of origin vis-a-vis the state of New Zealand, a country of destination. Additionally, the Recognized Seasonal Employment which also allows seasonal workers

²¹⁹ The Atlas of Environmental Migration p.23

²²⁰ Patricia Ramos, Ruth Lara, Peruvian Migration Policies - Policy and institutional frameworks, INTER-ACT RR 2014/08, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, 2014. p.9

²²¹ The Atlas of Environmental Migration p.74

²²² Urbán Ferenc: Az afrikai kontinens migrációs sajátosságai In: Tarrósy István – Glied Viktor – Keserű Dávid: Új népvándorlás, Migráció a 21. században Afrika és Európa között, Publikon kiadó, Pécs, 2011. p.121

from Kiribati to travel to New Zealand.²²³ Not going into any further detail on their personal contexts though, perhaps ignoring the emergency of the situation for now, the government decided to issue these visas in a lottery system.²²⁴ This new visa regime is based on the sovereign decision of New Zealand to act and provide (national) protection to vulnerable people arriving to their country, regardless of their international legal obligations to provide protection.

Kiribati's climate change adaptation strategy is a call to help. Australia responded to Kiribati's appeals more hesitantly than New Zealand. In 2014, the Seasonal Worker Programme included only 9 fruit pickers compared to a 110 in New Zealand in the same year.²²⁵

At this point we must also highlight "heliotropism" or "amenity migration"²²⁶, which means that certain regions are highly desirable due to their pleasant weather, and large degree of sunshine. More than just tourism, but circular migration or permanent resettlement within the country or cross-border. It is commonplace to think of retirees in the USA moving from Northern states to Florida and other Southern States, British tourists in Spain, the South of France, Cyprus, Greece and Malta. However, Russians living near the Arctic Circle, initially moving there for employment purposes during the Soviet era are slowly but surely moving more South. Even though certain climate models include the eventuality that Siberia and the Great Canadian North will have pleasant weather in the future decades.²²⁷ The latest trend is set by so-called "digital nomads", who settle for a few months to a few years for heliotropism and work remotely.

2.6. RETURN MOBILITY

In case of natural disasters and evacuation, the priority for disaster relief, authorities and humanitarian organisations is to ensure the populations can return to a normal life, meaning that locals can actually return to their homes. Not all evacuees can return, in fact, for the fear of further disasters, or the appearance of better prospects can encourage them to settle elsewhere, but even for those who do you want to return, numerous obstacles can emerge

²²³ Silja Klepp and Johannes Herbeck: Politicising climate change adaptation. In: Dimitra Manour – Andrew Baldwin – Dug Cubie – Anja Mihr – Teresa Thorp (eds.): *Climate Change, Migration and Human Rights*. Routledge, 2017. p. 179

²²⁴ Source: <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/about-visa/pacific-access-category-resident-visa> (Downloaded: 31 July, 2018)

²²⁵ Klepp and Herbeck p.179

²²⁶ *The Atlas of Environmental Migration* p.30

²²⁷ *The Atlas of Environmental Migration* p.31

uninhabitable buildings and homes, lack of infrastructure, lack of services, such as food and water, and potentially contaminated physical surroundings. After the Fukushima nuclear disaster some parts of the surrounding areas remain uninhabitable for decades, but the Japanese government has declared some neighbouring areas to be recovered. Decontamination operations started and inhabitants were urged to return to the residence, however, only around 8% of inhabitants of the town of Nahala actually wish to return. In New Orleans in 2005 after Katrina hurricane city lost almost 1/4 of its population who were reluctant to return, even after reconstruction, despite appeals from the city's mayor repopulation is slow.²²⁸

2.7. IMMOBILITY

Some persons of concern refuse to move and some populations are trapped. These two different modalities are the combination of the need to migrate and the desire to migrate. In certain instances, there is a need to migrate but there is no desire to do so. This mobility can aggravate local vulnerability, but in spite of this, many small island states and communities do not wish to relocate. In other instances, for example, female agricultural workers of Mozambique wish to migrate due to their need to migrate caused by environmental degradation in the form of droughts and soil degradation. However, it is the male labour force that migrates to, for example, South Africa sends remittances home and thereby traps the female population in immobility in this capacity. This entrapment also increases vulnerability: when households, trapped in villages, which are regularly sent remittances, lose their key source of subsistence, this automatically causes insecurity and thus contributes to the eruption of conflict.

The original state and extent of vulnerability due to economic, demographic and political stress, joined with environmental stress, creates a desire and a need to migrate, which combined with the inability to migrate results in aggravated vulnerability and a trapped population.²²⁹ It must also be highlighted that for those who remain at home, remittances are the key to reconstruction after an environmental disaster. In Samoa in the South Pacific, following the 2009 tsunami, fund transfers increased when governmental aid was low and decreased when external aid was substantial. Just like a safety net emigrants can thus increase

²²⁸ The Atlas of Environmental Migration p.25

²²⁹ The Atlas of Environmental Migration p.29

the capacity of households to recover following a disaster, but in the process can weaken their own situation by drawing from their own savings.²³⁰

Olsson suggests that to reduce the risk of the self-fulfilling prophecy of mass displacement and armed conflict, we should focus on peaceful development in social justice and creating meaningful jobs, rather than boosting military capacity and erecting fences.²³¹ That is why, in the next chapter, I will focus on the various theories on human mobility which provide an understanding of human mobility, which serves as a premise for policy-makers. I will also address environmental insecurity as part of human insecurity and as part of state security to explain how environmental factors can be taken into consideration when address issues of human mobility.

CHAPTER 3: EXPLAINING ENVIRONMENTALLY INDUCED HUMAN MOBILITY

In this chapter, I will collect and summarize migration concepts and theories, in order to establish whether these provide an explanation for environmentally induced human mobility, or not, and if these do not, then can these at least be adapted to explaining environmentally induced human mobility. Subsequently, I will assess a very recent phenomenon, the ‘securitization of migration’ in order to determine whether such politically hyped processes provide an explanation or rather a distraction concerning environmentally induced human mobility, and I will demonstrate how security studies may be applied to explain environmentally induced human mobility. To conclude this chapter, I will create a classification of international human mobility, and by applying the relevant concepts and selecting the most relevant areas of international law, I will explain the definitions used in this dissertation in the following chapters.

3.1. REVISITING TRADITIONAL AND EMERGING MIGRATION THEORIES (IN THE WAKE OF REGULARISING CLIMATE CHANGE INDUCED HUMAN MOBILITY UNDER INTERNATIONAL LAW)

While there is an ever-growing abundance of agency reports on various forms and empirical experiences of environmental displacement from international organisations such as the World Bank, the International Organisation for Migration, the Food and Agriculture

²³⁰ The Atlas of Environmental Migration p.76

²³¹ Olsson p. 125

Organisation, and even human rights organisations, to this date the literature on the conceptualisation of such phenomena remain limited. And while many a times practical approaches yield solutions, the lack of adequate conceptual framework limits problem-solving to ad hoc, fragmented and emergency-type situations. The term “environmental refugees” was used by the United Nations Environmental Program in 1985, drawing the international community’s attention to environmentally induced human mobility for the first time. Almost 40 years on, migration experts, international lawyers as well as the international community struggle to define and to conceptualise this imminent phenomenon. “Ecological refugees”, “environmentally displaced persons”, “climate refugees”, and more recently even “climigration” are all terms coined to reference the same thing, and yet as we will see, not precisely the same thing. At the same time, there is a regular and loud call in the media from non-state stakeholders of the international community to manage the social injustices tied to climate change, demanding “climate justice”, and international organisations urge states to protect those most vulnerable to climate change, in particular those, who are displaced due to climate change. The confusion around the volume and the magnitude of this problem prevails, with references to old estimations between 25 million to 1 billion persons affected, and no further attempts to identify the potential number of persons of concern. The underlying problem also remains: without a standard definition, without the consolidation of fundamental concepts and conceptual frameworks, states as primary subjects of international law remain inapt to act in unity in a comprehensive way to provide protection to those most vulnerable to the negative effects of climate change.²³²

Creating a comprehensive conceptual framework does indeed require creativity. Migration studies as such is still struggling for its own emancipation among other fields of social sciences as a cohesive system of concepts and theories. On top of that, nowadays, migration experts are challenged with a series of situations of crisis, from all around the world, such as the 2011 Haiti Earthquake, the 2015 European Refugee Crisis, the 2018 Central-American Refugee and the perpetual Rohingya Refugee Crisis in Bangladesh. Perhaps by now it is beyond discussion that environmental deterioration, natural hazards, climate change contribute in certain ways and to some extent to such crisis. Understanding such complexities require abstraction of these empirical problems.

Although environmentally induced human mobility may seem to be a novel social phenomenon, it is not an entirely new phenomenon, it is merely a novel research area.

²³² For more information on this: V Horváth 'The Right to Asylum of Climate Refugees', *Acta Humana*, 1 (2021) 119–136

Anthropology has long been researching and trying to explain how the human race actually evolved, and recently research has begun on how nomadic tribes settled in certain places. Human mobility resulting from environmental factors, an “ecological push”, as Piguet notes is indeed the first form of migration in history, referenced as “primitive migration”, because of human kind’s inability to cope with natural forces.²³³ In this section, I will collect and summarize the most relevant, traditional and emerging migration concepts and theories, in order to establish whether climate change induced human mobility may be interpreted by any of these theories at all. If it is found that these cannot interpret climate change induced human mobility, then I will assess how these could be adapted to understand climate change induced human mobility. The term “mobility” according to IOM includes different forms of movement and refers to the ability to migrate.²³⁴ In my opinion, the term also includes the desire to migrate.

In this section I will use the term “human mobility”, in its broadest sense, as a movement of a person or a group of persons across an internationally recognised state border or within a state border, either voluntarily or involuntarily, for whatever reasons, and for however long.

3.1.1. The state of current migration concepts

de Haas simply sums up the state of current migration concepts by stating that “theories on migration are underdeveloped”.²³⁵ In my own interpretation, the various concepts and theories on human mobility can rather be summarized as a brainstorm of relevant concepts spanning over decades and continents, focusing, one at a time, on a single event, a single aspect of mobility, a single empirical experience of a vulnerable person or a group of persons, or a specific situation of crisis.

This lagging behind can be explained by numerous factors and trends. First of all, as Nagy²³⁶ points out, before 1914, international human mobility simply wasn’t an issue, as it is today. Up until the end of the 1900s, with certain exceptions concerning resettlement, individuals could travel and relocate relatively freely. It is the emphasis of state sovereignty as a building block of the new world order and the international community after the second

²³³ Piguet, E: From “Primitive Migration” to “Climate Refugees”: The Curious Fate of the Natural Environment in Migration Studies, *Annals of the Association of American Geographers*, 103:1, 148-162 p.151

²³⁴ The Atlas of Environmental Migration p.2

²³⁵ H de Haas ‘A theory of migration: the aspirations-capabilities framework’, *CMS* 9, 8 (2021)

²³⁶ Tamás Kende, Boldizsár Nagy, Pál Sonnevend, László Valki ‘Nemzetközi jog’, Complex Kiadó, Budapest, 2014. p. 526

world war that brings about state concern related to state sovereignty vis-à-vis migrants. So while human mobility is human nature, addressing it, in particular with issue-specific legal regimes is rather a novel trend. Subsequently, the research on international human mobility gained momentum through economic globalisation, the increasingly regularised international flow of labour and the aftermath of decolonisation, including resettlement of colonial nationals to former colonising countries as well as the civil unrest in certain countries as a result of the newly gained independence. Finally, nowadays, issues related to asylum and migration are so highly politicized, viewed as inevitably infringing state sovereignty, that this securitization of migration brings about the exacerbation of research and political discourse on international human mobility. And yet, international migratory flows are relatively small compared to other international flows such as international trade, global financial flows or information, which is reflected in the marginalisation of an autonomous migration studies.²³⁷

To shed light on the available literature, analysing the available research on international human mobility, most scholars do not elaborate a whole paradigm or cohesive system of concepts and principles. In this vein, Póczik²³⁸ maintains that the phenomenon of human mobility is examined by numerous social sciences, such as sociology, anthropology, history, demography, geography, political sciences, legal and international studies. At the same time, mostly reports by international organisations, as the most authentic source for climate change induced human mobility data, completely omit to touch upon theoretical explanations, and merely deduce generalisations from their empirical research. In my understanding, these fields limit their research and make one aspect of human mobility their focal point. Moving forward complex migratory flows call for multidisciplinary research. From the perspective of regularisation and legislation, the outcomes of a multidisciplinary research can yield an evidence-based, substantiated and substantial legal framework on climate change induced human mobility. Another oversimplified approach, yet a prevalent foundation for policy formation all around the world, is the division persons of concern into groups of emigrants and immigrants and researching these two oppositely directed flows of human mobility as essentially separate.²³⁹ Again, individual, particular fields of research are in fact effective in

²³⁷ D Sriskandarajah ‘Migration and Development’, Global Commission on International Migration, September 2005 p.3

²³⁸ Sz Póczik ‘A nemzetközi migráció tendenciái a 20. és 21. században elméleti és történelmi nézőpontból’, in Póczik Szilveszter, Dunavölgyi Szilveszter ‘Nemzetközi Migráció – Nemzetközi kockázatok’, HVG Orac, Budapest, 2008 pp. 31-111 p.66

²³⁹ Póczik p.69

answering a question related to one aspect of human mobility but are unable to provide complex interpretations. Thus Massey et al. conclude that ‘complex migration models’²⁴⁰ should be created. However, Piguet²⁴¹ points out that even as migration theories grew in coherence and complexity, environmental considerations generally disappeared from explanations of displacement, as humans gradually gained control, or the illusion of control, over nature through technological progress.

I will now move on to introducing the most relevant traditional theories on human mobility, and add some of the most relevant new concepts on human mobility. I will also assess them altogether in order to establish whether these theories and concepts are able to explain climate change induced human mobility in any way. Since it is beyond the scope of my research and the material of this article, I will only list the theories on the causes and motivations, the type of movements and trends in this paper, and as less relevant for the subject of this article, I will omit theories on the integration of the new arrivals. Moreover, for effective assessment, human mobility may not be considered as a single unit but must be examined in its elements. In my understanding, there are three essential elements of international human mobility: (i) leaving the country of origin or habitual place of residence (voluntarily or involuntarily), (ii) arriving in the country of destination (regularly or irregularly), (iii) staying in the country of destination (temporarily or permanently). Additionally, there are two other recurring elements, such as (iv) passing through a country of transit, and (v) leaving the country of destination (such as voluntary or forced return, expulsion). In this paper I will only address the circumstances of departure.

3.1.2. Classic Theories on Human Mobility

To start off with, classic migration theories can be divided into two paradigms, namely (i) ‘historical-structural theories’, which maintain that persons on the move are fundamentally constrained by structural forces; and (ii) ‘functionalist theories’, according to which human mobility is an economic optimisation strategy for an individual and/or their families as a result of making cost–benefit calculations.²⁴²

Historical-structural theories maintain that persons on the move are fundamentally constrained by structural forces. In this vein, the ‘Dependency Theory’²⁴³ explains the

²⁴⁰ D. S. Massey, J Arango, G Hugo, A Kouaouci, A Pellegrino, J E Taylor ‘Worlds in Motion. Understanding International Migration at the End of the Millenium’. Clarendon Press Oxford, 1998 pp.17-60 p.20

²⁴¹ Piguet p.151

²⁴² H de Haas, S Castles, M J Miller ‘The Age of Migration’, Bloomsbury Academic, 2020 p.49

²⁴³ de Haas et al p.49

underdevelopment of “Third World” countries as a result of the exploitation of their resources by colonial interference. Although completely omitted by the theory itself, as a factor in itself, exploitation of natural resources leads to the gradual but profound degradation of the natural environment. Moreover, this dependency is perpetuated by the unfair terms of global trade with the overwhelming power dynamics and division of tasks between developed economies and less developed states. Considering that the Dependency theory developed in the 1960s, in Latin America²⁴⁴, it is a direct predecessor of Climate Justice movement of the 21st century. Subsequently, a more comprehensive ‘World Systems Theory’²⁴⁵ developed, in the 1970s, focusing on the way ‘peripheral’ regions have been incorporated into the global economy controlled by core capitalist countries. de Haas claims that together with the emergence of multinational corporations, this accelerated rural change and deprived farmers and rural workers of their livelihoods, leading to poverty, rural-urban migration and rapid urbanization, as well as the emergence of informal economies.²⁴⁶ While in the World Systems Theory, there is but a mention of “rural change and deprived farmers”, there is a clear vacancy for the incorporation of the effects of natural and anthropogenic climate change. All in all, the Dependency and World Systems Theories were precursors of the Globalization theories²⁴⁷ that emerged in the 1990s, which put forward that globalization facilitates international human mobility as a consequence of improved transport infrastructure and communication technology.

Historical-Structural Theories are mainly criticized for depicting migrants as victims of global capitalism, who have no choice but to migrate in order to survive, and almost fully ignore human agency in this context.²⁴⁸ In comparison, the Functionalist theories reduce human mobility to a premeditated and deliberate cost-benefit analysis for the individual migrant and/or their families.²⁴⁹ One of the earliest and the most widely accepted complex migration models referring to this functionality is Lee’s Push-and-Pull Model²⁵⁰. A typical interpretation of the Model is provided by Boswell, in the case of „economic migration”, where Boswell lists typical usually push factors as economic conditions such as

²⁴⁴ Massey et al. p.35; de Haas et al p.49

²⁴⁵ Massey et al. p.35; de Haas et al p.49

²⁴⁶ de Haas et al p.49

²⁴⁷ However, de Haas maintains that such improvements have also increased the scope for trade and the outsourcing of production and services, which as he argues, has replaced some forms of migration. de Haas et al p.49

²⁴⁸ de Haas et al p.49

²⁴⁹ Christina Boswell: Addressing the causes of migratory and refugee movements: the role of the European Union, UNHCR Working Paper No 73. UNHCR, 2002, p.3

²⁵⁰ E. S. Lee ‘A Theory of Migration’, *Demography*, Vol. 3, No. 1 (1966), pp. 47-57

unemployment, low salaries or low per capita income relative to the country of destination, and migration legislation and the labour market situation in receiving countries as pull factors.²⁵¹ However, as Piguet points out²⁵², originally, even Lee briefly mentioned that a good climate is attractive and a bad climate is repulsive to nearly everyone. Boswell continues to explain²⁵³ that involuntary displacement would be explained through factors such as state repression or fear of generalised violence or civil war, but I would also add natural hazards or gradual natural deterioration due to climate change.

With the evolution of human mobility trends and patterns, reforming the abovementioned Classic Theories, Neoclassic Theories emerged. During the mid-20th century, neo-classical economic theories were extended to multiple dimensions of the social sciences, including migration. The neoclassical economics perspective²⁵⁴ combines an individual decision motivated by income maximization (microlevel) with country-level structural determinants such as wages and employment conditions (macrolevel), which I will also address in a later section. An essentially neoclassic structural theory is the Dual Labour Market Theory²⁵⁵ which maintains that international human mobility is caused by a structural and chronic demand within advanced economies for lower-skilled workers to carry out production tasks and to staff service enterprises. Subsequently, the New Economics of Labour Migration Theory²⁵⁶ emerged as a critical response to this neoclassic structural approach, which regards migration as a family or household decision rather than an individual decision. And while the New Economics of Labour Migration theory incorporates the consequences for the countries of origin, the Dual Labour Market theory focuses on countries of destination. Additionally, the Migration Transition Theory²⁵⁷ maintains that demographic shifts and economic development initially increase levels of domestic and international mobility. Although at first it may seem, that this Theory does not allow for the integration of environmental concerns, Hunter²⁵⁸ takes natural hazards into account as “personal preferences”. I would argue that the term “personal preferences” are usually used synonymously with personal circumstances, a variant of environmental pressures experienced by an individual, and as

²⁵¹ In this context, Boswell also coins the term ‘pioneer voluntary migration’. Boswell p.4

²⁵² de Haas et al p.50

²⁵³ Boswell p.3

²⁵⁴ BUENO, Xiana; PRIETO-ROSAS, Victoria: Migration Theories IN: GU, Danan; DUPRE, Matthew E. (Eds) *Encyclopedia of Gerontology and Population Aging*. Springer, Cham, 2019 p.2

²⁵⁵ Bueno and Prieto-Rosas p.2

²⁵⁶ Bueno and Prieto-Rosas p.2

²⁵⁷ Zelinsky, Wilbur. “The Hypothesis of the Mobility Transition.” *Geographical Review* 61, no. 2 (1971): 219–249. p.222

²⁵⁸ Lori Hunter: *Migration and Environmental Hazards*. Population and Environment, Vol. 26, No. 4, March 2005 p.277

such climate change may affect such demographic shifts and economic changes that increase domestic and international human mobility. Finally, the concept of Cumulative Causation²⁵⁹ maintains that international human mobility induces changes in social and economic structures that make additional human mobility likely. This is sometimes also referred to as “replacement migration”, creating a chain of countries engaged in attracting migrants to replace those who have left for other countries. If the individual experiences are deemed a success, human mobility can give rise to a “culture of migration”, revering to the Functionalist approach to human mobility. Such Transition Theories and Development Theories also don’t provide sufficient explanations on why people move once development occurs, therefore de Haas²⁶⁰ argues that it is necessary to conceptualize individual migration as a function of capabilities and aspirations to move, which I will later explain with his Aspirations and Capabilities framework.

As demonstrated above, within classic and neo-classic migration theories, constructed on fundamental classic and neo-classic economic principles, the emphasis of individual economic motivations (Functionalist approach) and economic inter-state relations (Structural approach) overshadow all other aspects, such as social and community factors or even completely omit some, such as environmental factors. Neoclassical approaches take no account of historical causes of human mobility, oversimplify the role of the state and structural constraints, and completely omit environmental factors, while historical-structural approaches overemphasize political and economic structures and fail to explain individual motivations. Additionally, these offer explicitly no explanation to environmental displacement, but historical-structural as well as to some extent neoclassic functionalist theories may be applied to environmental displacement. Nevertheless, in most scenarios environmental determinants such as the effects of climate change may be added to the equation. Adding factors outside their scope will not make these concepts more operational or effective. Therefore, instead of broadening such tools to encompass the various types and complex nature of the effects of climate change, new conceptual frameworks should be established.

3.1.3. Emerging Concepts on Human Mobility

An emerging trend towards the end of the 20th century and in the beginning of the 21st century was to shift research focus from causes to actual movements and trajectories, to consider human mobility as a system or a network. As mentioned above classic perspective on human

²⁵⁹ de Haas p. 60

²⁶⁰ de Haas p.62

mobility was to segment it in terms of its direction; in terms of immigration and emigration. By now, at the peak of economic globalisation, scholars realise that human mobility is not actually or at least not always one-way, nor is it linear (especially if illegal facilitation activities are involved), nor is it definitively permanent, or even individual in its strictest sense.

Massey's Network Theory²⁶¹, similarly to Bourdieu's Social Capital Theory²⁶², focuses on knowledge sharing among persons of concern, and the transmission of the migration experience to relatives and friends in the countries of origin as a driver of international human mobility. As a result, there is a multiplier effect referred to as 'chain migration', which implies that those who arrive following another person enjoy lower costs and risks of migration. Network theory is useful to explain family reunification processes and as Bueno and Prieto-Rosas refer to it, care related migration. Similarly, Institutional Theory²⁶³ operates at the meso level, pointing out how profit oriented organisations, including legal entities and illegal human smuggling networks, and even advocacy groups such as nonprofit organizations, mediate the human mobility process. More recently, the Migration Trajectory²⁶⁴ concept emphasizes the trajectory of a person of concern observing them in the country of origin but emphasizing the route and countries of transit and the circumstances of arrival. Studying the trajectories of international human mobility is especially vital in the study of irregular and mixed human mobility, when persons of concern are least likely to take a straight, direct and relatively short route to their country of destinations, or any location they deem ultimately safe. More specifically, this approach recognises that (a) trajectories are turbulent, contests a supposed intended country of destination and focuses on constantly fluctuating opportunities and constraints; and (b) certain critical events during the journey prove to be pivotal in the continuation of a migrant's journey. Although among critical events Wissink references events embedded in and outside of the migrant's social network and personal circumstances, we must add that such critical events may also involve natural disasters or rapid onset effects of climate change. Linked close to these theories, the concept of the Migration Industry²⁶⁵ also emerged. Proponents claim that the as a result of the industrialisation of international human mobility, the Migration Industry consists of any service provider in its economic as well as humanitarian sense, such as employers, travel agents,

²⁶¹ Massey et al. p.448

²⁶² P Bourdieu 'The forms of capital' (Chapter 1), in J Richardson Handbook of Theory and Research for the Sociology of Education' (1986), Westport, CT: Greenwood, pp. 241–258 p.222

²⁶³ Bueno and Prieto-Rosas, p.2

²⁶⁴ Wissink, M: The evolution of migration trajectories of sub-Saharan African migrants in Turkey and Greece: The role of changing social networks and critical events, Geoforum (2017)

²⁶⁵ de Haas et al p.66

recruiters, brokers and house agents, smugglers, traffickers, humanitarian organisations, immigration lawyers, and any other intermediaries, who have a strong interest, in most cases, an economic interest in the continuation of human mobility. *Nota bene*, while migration network theories focus on the role of social capital, migration systems theory looks at how migration is intrinsically linked to other forms of exchange, notably flows of goods, ideas and money; and how this changes the initial conditions under which migration takes place, both in origin and destination societies.²⁶⁶ Moreover, as Migration Transition Theory focuses on the long-term interlink between development and human mobility, a Migration Hump²⁶⁷ is used to describe a short-term hike in emigration in the wake of a trade reform or other economic shocks. Such migration humps are colloquially referred to as a “wave of migration” when referring to disaster displacement.

Thus, yet again, these emerging concepts on international human mobility are unable to fully accommodate environmental factors, and thus explain the trajectories of climate change induced international human mobility.

This leads us to de Haas’ Aspirations-Capabilities Framework²⁶⁸. This Framework creates a double axis of a person’s aspirations and their capabilities, and focuses on the person of concern as a “migratory agent”. For the purposes of the application of this framework, de Haas describes migration aspirations as “a function of people’s general life aspirations and perceived geographical opportunity structures”, whereas “migration capabilities are contingent on positive (‘freedom to’) and negative (‘freedom from’) liberties”. Additionally, a person of concern will have a certain extent of access to economic, social and cultural resources to be able to move. This provides a theoretical categorisation of five ideal-typical individual mobility types based on personal migration aspirations and capabilities, which are the following in my own interpretation: (i) voluntary immobility: due to low migration aspirations but potentially high migration capabilities; (ii) acquiescent immobility: due low migration aspirations and low migration capabilities; (iii) involuntary immobility: due to high migration aspirations but low migration capabilities; (iv) involuntary mobility: due to low migration aspirations but potentially high migration capabilities; and (v) voluntary mobility: high migration aspirations and high migration capabilities.²⁶⁹ Moreover, based on the positive liberties, such as the freedom to do something, and negative liberties, such as the freedom from external constraints, de Haas identifies the following theoretical migration

²⁶⁶ Ibid p. 68.

²⁶⁷ Ibid p. 61

²⁶⁸ de Haas p.17

²⁶⁹ de Haas p.22

categories: (i) precarious migration: referring in general to short-distance, often internal human mobility by relatively poor people vulnerable to exploitation, i.e., poor rural-urban migrants, undocumented labour migrants, unsuccessful asylum-seekers, internally displaced persons, which is characterised by the low level of positive and negative liberties; (ii) distress migration: referring to the deprivation of mobility freedom with no reasonable option to stay, characterised by high level of positive liberties and low level of negative liberties; (iii) improvement migration: both internal and international human mobility for the purposes of improving ones economic circumstances, characterised by low level of positive liberties and high level of negative liberties; and (iv) free migration: relatively unconstrained human mobility in and between wealthy countries or by wealthy people or skilled workers, characterised by high level of positive and negative liberties.²⁷⁰

While these established categories may not seem practical at first, in my understanding, they do more service to persons of concern in case of climate change induced human mobility, than any other conceptual framework. The Aspirations-Capabilities Framework essentially ends the debate on whether those persons who are displaced by the negative effects of climate change qualify as “voluntary migrants” or “involuntary migrants”. The framework conceptually explains that human mobility moves on a scale. Recognising the essence of involuntary migration, which are external circumstances putting pressure on an individual’s predisposed circumstances, and identifying on that scale of human mobility the point of intervention is the key to regulate climate change induced human mobility under international law and provide protection to those most vulnerable to climate change.

As Mayer and Hugo point out, human mobility should be viewed on a scale of intent, ranging from absolutely no choice through some form or extent of choice available to complete freedom of movement, rather than as binary of forced versus voluntary movements.²⁷¹ This would also mean that once environmental constraints increase and reach a threshold, voluntary environmental migrants will become forced.²⁷² An immediate threat is lacking, as environmental circumstances are sometimes life-threatening, where the persons of concern are faced with death if they remain in their place, as in the case of natural disasters. However, with slow-onset environmental changes such as sea-level rise and desertification, the lives and the livelihoods of people gradually worsen, only becoming apparent after a certain point, leaving some time and perhaps even will to consider on how to react to it. As Mayer sums

²⁷⁰ de Haas p.27

²⁷¹ Mayer p.31

²⁷² Mayer p. 31

up, most environmentally displaced persons would therefore fall under the category of voluntary migrants, although that would not be entirely true.²⁷³

3.1.4. Conceptualising climate change induced international human mobility

Before we identify and adapt the most relevant concepts to climate change induced international human mobility, it must be reinforced that environmentally induced human mobility hasn't always been so undertheorized. At first, a behaviourist current in geography during the 1960s had a significant interest in human mobility. Wolpert's Stress Threshold Model²⁷⁴ perceived human mobility as an adjustment to environmental stress and considered human mobility as a decision as the result of stressors affecting individuals up to a certain threshold, beyond which persons of concern decided to relocate. Wolpert even elaborated a true mathematical model but 'environmental' factors incorporated therein were rather urban environmental factors such as noise, green areas, personal safety, congestions, than natural environmental factors.²⁷⁵ Subsequently, from the 1970s onwards, migration theories concentrated on economic inter-state relations as already described above. Up until the political discourse on climate change exploded, migration scholars only sporadically addressed the nexus between environmental factors and human mobility. However, even today, scholarly literature remains limited and can be characterised by the broadening of mainstream migration concepts, with limited results.

As a premise, classic migration concepts divides 'migrants' into persons who leave for economic reasons and those who leave for other reasons, that are non-economic. On the one hand, as demonstrated above, neoclassical theories of migration, as well new economics of migration, and even sociological theories, all perceive human mobility as a process through which people seek better general economic conditions. On the other hand, scholars like Póczik²⁷⁶ establish that the traditional "push and pull" model's macro perspective identifies a two-by-two table of economic and non-economic push factors and economic and non-economic pull factors, which is then facilitated by the migratory network. Mayer summarizes the "great semantic heterogeneity in the literature on environmental migration" as he refers to it, by dividing it into two schools, the minimalist and the maximalist. As such, Mayer qualifies Myers as a maximalist, who perceive a strict distinction between people

²⁷³ Mayer p. 31

²⁷⁴ J Wolpert 'Migration as an Adjustment to Environmental Stress' JOURNAL OF SOCIAL ISSUES VOL. XXII, NUMBER 4, 1966 p.95

²⁷⁵ Wolpert p.101

²⁷⁶ Póczik p.68

who are displaced because of environmental factors and those who are displaced by other causes, such as economic, social or political causes.²⁷⁷ While according to Mayer, minimalists maintain that environmental and other factors may not be distinguished so “neatly” from each other, and often times economic factors result from underlying environmental causes, thereby the environmental causation of a displacement is often indirect and complex.²⁷⁸ Mayer continues to explain that the effect of environmental factors must be conceived as part of a cluster of causes, and causation, especially with regards to international mobility, may be indirect.²⁷⁹ Focusing on climate change induced human mobility instead of environmentally induced human mobility makes this even more complex and vague, as climate change increases the likelihood of certain phenomena but it cannot be considered as the cause of an individual environmental phenomenon.

A pivotal milestone in the literature on climate change induced human mobility, synthesizing available research and scholarly literature, was the 2011 Foresight Report commissioned by the UK government. The report established that human mobility is complex, multi-causal and non-linear, and that an environmentally deterministic approach is destined to fail because it does not account for the importance of human agency in migration outcomes.²⁸⁰ The report also introduced a new conceptual framework based on the classic Push-Pull Model, with the premise that environmental change can affect human mobility through influencing existing drivers of migration.²⁸¹ In fact, there are thus five, interdependent drivers of human mobility: economic, social, political, demographic, and environmental. Hinting at the Stress Threshold Model, the report established that human mobility happens based on the relative importance of a driver to the person of concern. Moreover directly and indirectly available ecosystem services, as environmental drivers, through interaction with other drivers cause human mobility.²⁸² More specifically, the identified drivers combined with personal/household characteristics and other intervening obstacles and facilitators, create the foundation of the decision to move or to stay. As such, the Foresight report²⁸³ comes up with the following categories for environmentally induced human mobility:

[TABLE 3]

²⁷⁷ Mayer. p.28

²⁷⁸ Mayer also notes that the 2004 Toledo Initiative on Environmental Refugees and Ecological Restoration was based on maximalist concepts. Mayer p.29

²⁷⁹ Mayer p.33

²⁸⁰ Foresight Report p.31

²⁸¹ Ibid p.32

²⁸² Ibid p.44

²⁸³ The Atlas of Environmental Migration p.19

Migration influenced by environmental change	
Move:	choose to leave: Migration
	forced to move: Displacement
Non-migration influenced by environmental change	
Stay	unable to leave: Trapped
	choose to stay: immobile

Continuing with the three dimensional approach of the need, the desire and the capacity to migrate, Zickgraf and Perrin categorise the following factors and outcomes of environmentally induced human mobility:

[Table 4]

	Environmental stressor (slow-onset or rapid on-set)					
Need to migrate	NO			YES		
Desire to migrate	NO	YES		NO	YES	
Capacity to migrate		NO	YES		NO	YES
OUT-COMES:	immobility	immobility/ trapped	mobility	immobility	trapped	mobility

A more visual and more detailed three dimensional explanation of the similar understanding of environmentally induced human mobility was drawn up by Gemenne, who categorises migration based on the following three dimensions: 1) level of preparedness, meaning proactive or reactive migration, 2) level of coercion, meaning voluntary or forced migration, and 3) duration, meaning short-term or long-term migration. As a result the following 8 different types of migration can be distinguished: 1) forced, reactive, and long-term; 2) voluntary, reactive, and long-term, 3) voluntary, proactive and long-term; 4) forced, proactive and long-term; 5) forced, reactive and short-term; 6) voluntary, reactive and short-term; 7) forced, proactive, and short-term; and 8) voluntary, proactive and short-term.²⁸⁴

²⁸⁴ The Atlas of Environmental Migration p.3

At this point the perceptions of (potential) migrants must also be addressed as perceptions play a key role in mobility strategies. Respondents in Vietnam feel that environmental stressors affect livelihoods significantly. Nevertheless, when asked about the direct cause of migration respondents identified it as being predominantly economic in nature. Additionally, financial, physical, human, social, political and natural resources were all considered in terms of potential mobility strategies. As a result, those who don't own land or homes are more susceptible to environmental shocks and stresses on the one hand, and on the other hand, they are also more likely to participate in governmental relocation programs, or migrate on their own. Personal human assets, such as knowledge and skills, health and age and psychological state, also shaped the capacity of households to respond and adapt to environmental stress. Social assets, such as social networks and support systems also turned out to be important factors in making the decision to migrate.²⁸⁵ In this vein, according to the World Bank, migration is a widespread strategy to cope with and adapt to changes in climatic and environmental conditions, as 30% of households in sample countries in Africa have migrants. Although poor climate and extreme weather conditions lead to a higher probability of migration, the role of climate is smaller than that of socioeconomic characteristics and job prospects.²⁸⁶

Apart from identifying the causal link between climate change and international human mobility, for the sake of prognosis for policy-formation purposes, identifying key geographical areas of concern, as well as key groups of persons of concern, has also gained support recently. One such approach to international human mobility, and in particular climate change induced international human mobility is the Migration Hotspots approach. This concept is rooted in for example the World Bank report on natural disaster hotspot²⁸⁷, and climate change hotspot²⁸⁸, and climate change in-migration and out-migration hotspots²⁸⁹ as well as the EU's 'hotspot approach to migration'.²⁹⁰ Another approach is identifying groups are multidimensionally vulnerable. As such, marginalised groups are most exposed to climate hazards and have the least capability to adapt to the effects of climate change.

²⁸⁵ The Atlas of Environmental Migration p.67

²⁸⁶ Quentin Wodon, Andrea Liverani, George Joseph, Nathalie Bougnoux: Climate change and migration The World Bank, 2014

²⁸⁷ The World Bank: Natural Disaster Hotspots: A Global Risk Analysis, 2005. p. 15

²⁸⁸ Turco et al. p.1

²⁸⁹ Clement, Viviane, Kanta Kumari Rigaud, Alex de Sherbinin, Bryan Jones, Susana Adamo, Jacob Schewe, Nian Sadiq, and Elham Shabahat. 2021. Groundswell Part 2: Acting on Internal Climate Migration. Washington, DC: The World Bank p.viii

²⁹⁰ https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/hotspot-approach_en

Marginalised persons of concern may belong to a certain social group or may be children, older people, disabled or sick, or even members of an indigenous group. Moreover, once displaced, vulnerability increases.²⁹¹ Simperingham defines the simple equation of “exposure + vulnerability = climate displacement” to explain climate change induced human mobility. Simperingham maintains that more often than not, it is exposure to climate hazards combined with the local vulnerability of an individual or community that leads to displacement.²⁹²

At this point we must also note that differentiating among vulnerable people perpetuates discrimination, inequality as well as local and global social and political tension. Echoing the human rights based approach, all measures to prevent and manage climate change induced human mobility must ensure that the rights of affected communities are respected, protected and fulfilled, that all measures are designed and implemented with the meaningful participation of affected communities, that non-discrimination is ensured across all measures, and that the particular needs of the most vulnerable are addressed.²⁹³

Furthermore, Boswell explains that theories on migration may be classified into three levels: the macro, the meso and the micro level assessments. Within this framework: (i) ‘macro theories’ emphasise the structural, objective conditions which act as “push and pull” factors for human mobility; (ii) ‘meso theories’, rejecting the macro focus on push and pull factors, locate human mobility flows within a complex system of linkages between states; and (iii) ‘micro theories’ focus on the factors influencing individual decisions to move, analysing how persons of concern ‘weigh up the various costs and benefits’ of moving.²⁹⁴ While Boswell states that these three approaches are not mutually exclusive²⁹⁵, I would go as far as to say that these three levels of assessment should be applied at once or in three consecutive steps for the sake of efficiency. Thus, when analysing international human mobility flows, a multilevel perspective should be applied. In this case, in the case of climate change induced human mobility, the effects of climate change should be incorporated on all three levels, as demonstrated in the table below:

TABLE 5 Multilevel perspective on Climate Change Induced Human Mobility

²⁹¹ Simperingham p.88

²⁹² Simperingham p.88

²⁹³ Simperingham p.89

²⁹⁴ Boswell p.3

²⁹⁵ Boswell p.4

Classification	Description	Aspects of Climate Change Induced Human Mobility
Macro level	Structural conditions, Push-and-Pull models	Concepts of Climate Justice The principle of Common but Differentiated Responsibility
Meso level	Complex system of linkages between States	Interdependence of Drivers Adaptation through development
Micro level	Individual decision-making	Identifying climate change hotspots Identifying multidimensionally vulnerable groups

3.1.5. Conclusions: Undertheorized empiria and emerging conceptual frameworks

Assessing the most relevant migration theories it must be highlighted that no theory or concept denies the climate change – human mobility nexus. Those concepts and models which ignore environmental factors, simply do not wish to be more than were originally intended, a limited economic model to demonstrate 20th century migratory flows. Those concepts and theories which accommodate environmental factors as potential drivers of human mobility vary from an environmentally deterministic perspective to a more contributory perception. Interestingly, unless commissioned for operational purposes for an international organisation such as the World Bank or for a particular government, scholarly literature fails to focus on climate change and inconsistently researches natural hazards or gradual deterioration of the natural environment. Such lack of focus and inconsistency, coupled with the segmentational, and unidimensional approach to human mobility, renders it almost impossible to draw well-established, well-substantiated scientific conclusions on the causal effects of climate change with regards to international human mobility. Nonetheless, synthesis reports focusing on the social effects of climate change, such as human mobility, produce evidence for a the interlink between climate change and human mobility.

Once the problem is well-established by the relevant scholarly literature, research finding may be used to elaborate policy recommendations. Consequently, the triangle of (i) multicausal, interdependent drivers of international human mobility, (ii) climate change hotspots, and (iii) the multidimensional vulnerability of certain groups, lay out the blueprint for the international community to act together. Incorporating the requirements of the Human

Rights Based Approach with a Multilevel Perspective enables policy makers to anticipate and plan ahead instead of implementing ad hoc, emergency responses.

3.2.REVISITING THE SECURITY-MIGRATION NEXUS

State security, or in other words, national security is still the prevailing paradigm in international relations.²⁹⁶ To this day, states are the primary guarantors of peace and security, within their state borders and outside of these borders. This concept instantly raises the issue of migration. In the first chapter I referred to the fact that human security maybe interpreted in a way that it applies to citizens and migrants alike. This notion is supported by the „rights approach” or „human rights based approach” to security and the similarities between the concept of human security and human rights. It is evident that a state must protect its constituents, but what about non-citizens/migrants? Moreover, it is also evident from the UN Charter and the concept of state sovereignty, that a state must refrain from harming the citizens of another state, even if these people are within their territory. And what if these non-citizens are irregular migrants, breaking some kind of laws pertaining to their status in the host state. Consequently, in this section, I will assess the migration-security nexus, focusing on individual irregular migrants. As I discussed the negative implications of globalization in the first chapter, it must also be clarified that global labour migration leads to the levelling out of differences in average wage because of the efficient use of labour resources, and as such – also through remittances - the aggregated world output increases. Nonetheless, in this chapter I will be describing the potential threats to state security, since security policy is based on risks and fear.

3.2.1. Securitization of Migration: Focusing on State Security

The notion of state security is directly derived from the concept of state sovereignty. This concept of state sovereignty is two dimensional. Internally, sovereignty means that there exists an ultimate authority over a particular people and territory, and this essentially possesses the „final and absolute political authority in the political community”. Externally,

²⁹⁶ David A. Baldwin (1997): The concept of security, *Review of International Studies*, 23, 5-26, p.5

sovereignty means that the state is recognized by the international community as an independent entity and it is free from any external authority.²⁹⁷ According to Kenneth Waltz²⁹⁸, it is thus up to the state to decide how it deals with the problems that arise internally and externally. Regarding the historical context of state security, it was the Westphalian Peace Treaty of the 17th century that solidified and as such quasi-legalized this concept in international relations. Consequently, in order to conserve the freshly obtained peaceful but frail status quo of the territorial borders, sovereign nation states of - more or less - homogeneous groups of people were created in Europe.²⁹⁹ In the 20th century, especially as it developed during the cold war, in addition to territorial integrity, the concept of state security was fundamentally about the protection of citizens, institutions and core values of the state.³⁰⁰ Interestingly, in the 1970s the notion of „citizen security” emerged briefly in Spain, as a guiding goal for the reform of the Spanish security forces after the Franco regime ended. While the term „citizen” can refer to the membership of a city or a state, and as such may support state-building, but through the discriminatory language, the concept of „citizen security” essentially does not refer to the human aspect of security issues.³⁰¹ Legally, the concept of state sovereignty is fairly straight forward, as the United Nations Charter’s Article 2 explicitly stipulates - and thus ensures state security - that: „All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” From the perspective of conventional international law, there are only two exceptions from this rule, self-defence and collective sanctions ordered by the Security Council (UN Charter Chapter VII). In the UN Charter’s Article 51: „Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.” The notion of security, as well as in particular „state security” is subject to numerous interpretations. A narrow definition of state security emphasizes minimizing risk, which could lead to the simple conclusion

²⁹⁷ Thomas J. Biersteker and Cynthia Weber: The social construction of state sovereignty in Thomas J. Biersteker and Cynthia Weber (eds.) (1996): *State sovereignty as social construct*, Cambridge University Press, p.2

²⁹⁸ Ibid p.5

²⁹⁹ Amitav Acharya (2003) *Guns and butter: Why do human security and traditional security co-exist in Asia?*, *Global Economic Review: Perspectives on East Asian Economies and Industries*, 32:3, 1-21 p. 2

³⁰⁰ *Human Security Now! Report*, 2003, p.5

³⁰¹ Alice Edwards and Carla Ferstman (2010): *Humanising Non-Citizens: The Convergence of Human Rights and Human Security in HUMAN SECURITY AND NON-CITIZENS: LAW, POLICY, AND INTERNATIONAL AFFAIRS*, A. Edwards and C. Ferstman, eds., Chapter 1, Cambridge University Press, 2010.

that all international movements, exchanges, and contacts pose a potential threat to the sovereignty of the state. The collective autonomy and dignity of the state thus takes precedence over autonomy and dignity of the individual, which - as I will later explain - lies at the core of human security.³⁰² However, a broader definition of state security, also implies the economic and social welfare of the state's citizens. This broader sense of the definition of state security also includes human security. Nonetheless, in the present chapter, I will assess the narrow definition of state security, and I will reiterate to the broader term in the next chapter on human security.

It is by now commonplace to state that at the dawn of the 21st century, new security challenges emerged. Some of these challenges are structural pertaining directly to the process of globalization, but globalization also raised awareness of novel global issues. The turn of the century saw the rise of a new geopolitical context and global shifts. At the end of the bipolar world and cold war era, paralleled with the collapse of colonialism as well as communism to some extent, fundamental changes occurred in international relations: states collapsed and new states were born, powerful malicious and benevolent non-state actors appeared, and new global concerns emerged. By the new millennium, civil wars and intrastate conflicts – rather than interstate wars – accounted for over 90% of all conflicts. As such, according to the UN, internal conflicts overtook interstate wars as the major threat to international peace and security.³⁰³ This change in the form of warfare has blurred the distinction between combatants and civilians, as participants and as victims of the conflicts.³⁰⁴ International and domestic terrorism is also important to highlight as a new phenomenon because it has become the most concise way to shape public opinion on controversial issues, such as migration.³⁰⁵ The sovereignty of a state was by now contested by individuals, and not necessarily other states, externally as well as internally. In addition, these new types of conflicts gave dramatic rise to new war crimes, such as sexual and genderbased violence in wartime. Therefore, the need for security from external threats has lost its relevance to victims of such new crimes.³⁰⁶ Meanwhile, the expansion of the truly global market and trade ties, economic interests superseding the delineation of states has had multiple consequences on state

³⁰² Acharya p.9

³⁰³ Human Security Now! 2003 Report, p.5

³⁰⁴ Contrary to the First World War where they represented only 5% of the victims, civilians at the present are between 80 and 90% of all casualties of conflicts. (Tzifakis, p.356)

³⁰⁵ Joao Estevens (2018): Migration crisis in the EU: developing a framework for analysis of national security and defence strategies. *Comparative migration studies*, 6(1), 28 at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6182341/> (Downloaded: 26 April, 2019)

³⁰⁶ Nikolaos Tzifakis (2011): Problematizing human security: a general/contextual conceptual approach, *Southeast European and Black Sea Studies*, 11:4, 353-368 p.356

sovereignty as well as state security. Firstly, this economic interdependence has a political price of increased vulnerability, and of delegating some national authority to common international institutions such as the World Bank or the IMF.³⁰⁷ Either way, for a state participating in global trade and its legal framework, their much appreciated state sovereignty will be trumped exposing themselves to potential state security threats, such as global financial crises. Globalisationists claim that interdependence erodes state sovereignty and as such poses as – an external - threat to state security. Secondly, although more people have access to information and essential goods than ever before, the gaps between rich and poor countries, as well as wealthy and destitute people are greater now than ever before, while these groups of people individually as well as their states are increasingly connected to a point that these very situations become interdependent on each other, thus reinforcing global injustice. The exclusion and deprivation of whole communities from certain benefits naturally contribute to tensions, violence and conflict within countries, which spill over the borders eventually.³⁰⁸ Thirdly, the dominant forms of economic and financial globalization – through the inherent processes of liberalisation and integration - are clearly of benefit to those with considerable amounts of accumulated capital or trade in the marketplace, which means that countries of the South losing control over their power to determine and shape the economic policies. More specifically, Abdul Wahab claims that, developmental and economic policy-making have increasingly come under the control of foreign (Northern) governments or of international financial, trade and economic organisations controlled by Northern governments and acting in favour of trans-national companies and banks.³⁰⁹ This very particular loss of state sovereignty not only further exacerbates the vulnerability of the global South but also contributes to the political tension between the two geopolitical hemispheres. Thus financial vulnerability results in state insecurity, which contributes to international insecurity.

These trends together with the spread of liberal democratic institutions, the commitment by both intergovernmental and non-governmental organisations to humanitarian activism and intervention, and growing trends towards regional integration, gave way to the emergence of a global civil society existing alongside the international society of states.³¹⁰

³⁰⁷ Supt. Shahbudin Bin Abdul Wahab (2002): GLOBALIZATION AND ITS IMPLICATIONS ON NATIONAL SECURITY, Journal of the Royal Malaysia Police Senior Officers' College p.30

³⁰⁸ Human Security Now! Report, 2003, p.5

³⁰⁹ Abdul Wahab p.30

³¹⁰ Giorgio Shani (2017): Human Security as ontological security: a post-colonial approach, Postcolonial Studies p.2

Humanitarian activism spilled over to other issues such as environmental deterioration³¹¹ based on the realization that environmental pollution is borderless and the slow acknowledgement of the consequences of anthropogenic climate change and created the current, mainstream global environmental and climate movements. More importantly, environmental deterioration in itself has a direct effect on the sovereignty of the state, if we take account of the current sea-level rise that cause small island states in the Pacific to actually, physically lose their shores and infringe their territorial sovereignty. Furthermore, climate change will diminish the prospects for 40% of the global population, which is about 2.6 billion people.³¹² Similarly, food insecurity not only affects the livelihood of people in the state's territory in terms of food shortage but food shortage has additional implications on the economy as well as international trade. Although with the uncurbable boom of the information, communications and technology industry, every single one of us got connected to some extent, participation in the processes of globalization apply to individuals in different ways. On the one hand, Fukuda-Parr claims that „criminals have been some of the most entrepreneurial elements in exploiting the opportunities created by the shrinking time, space and disappearing borders of an integrating world”. Criminal organizations have avidly distributed their operations across borders, building worldwide networks, using open economic and political borders for human trafficking, money laundering, smuggling as well as facilitating irregular migration, among other things.³¹³ On the other hand, globalisation is uneven, members of vulnerable or marginalized groups do not enjoy the benefits of globalization to the same extent as the powerful groups. As such globalization contributes to the division of communities and social tensions and conflicts are ignited.³¹⁴ Concerning our human nature rather, in connection to globalization, numerous other concerns arose. The spread of new epidemics such as HIV/AIDS pose novel threats³¹⁵, whereas the eradication - or curbing - of more traditional epidemics globally, in tandem with the improvement of our global health care had direct effects in overpopulation. Moreover, recurring to our baseline of the Westphalian nation-states, although it has been contested that a true (ethnic) nation-state had never existed in Europe, even following the Westphalian Peace Treaty, it is evidently more apparent today

³¹¹ P. Brian Fisher (2011): Climate change and human security in Tuvalu, *Global Change, Peace & Security*, 23:3, 293-313 p.295

³¹² Asfaw Kumssa & John F. Jones (2010): Climate change and human security in Africa, *International Journal of Sustainable Development & World Ecology*, 17:6, 453-461 p.453

³¹³ Sakiko Fukuda-Parr (2003) New Threats to Human Security in the Era of Globalization, *Journal of Human Development: A Multi-Disciplinary Journal for People-Centered Development*, 4:2, 167-179 p.172

³¹⁴ Fukuda-Parr, 2010, p.177

³¹⁵ Kumssa & Jones, 2010, p. 454

that states are becoming increasingly civic; as identities may not correspond to the territorial sovereignty any more, „triggering a reconceptualization of the traditional national identity associated with nationality”, with a much bigger room for cultural diversity.³¹⁶ Penultimately, one of the conceptual shortcomings of state security is the 'democratic dilemma'. According to Fauser, liberal democracies are founded upon two legitimizing principles; collective self-determination and universal individual rights. At the same time, the very purpose of state sovereignty is to react on security risks, and as such this collective decision-making is limited by universally applicable rights; and in fact it is also true vice versa.³¹⁷ This age-old dilemma is but a fertile soil for the seeds of the novel challenges of the 21st century, such as transnational migration. That's why globalization theorists now argue that these new challenges, which are global in their essence and therefore require collective action, render traditional state-centered approaches to security planning inadequate. Thus most recently, states have started to respond to these new threats rather by pursuing „cooperative security”, both domestically and internationally. Domestically, national security establishments tend to outsource their tasks and employ the professional services of private companies, whereas internationally, states are pursuing an ever increasing number of multilateral, intergovernmental, regional or global frameworks. (Paul & Ripsman, 2004, p.199)

Finally, although conventional international law seems fairly straight on the issue of state sovereignty, customary international law is a whole other question. The above elaborated global security concerns such as terrorism and international crimes, such as war crimes, crimes against humanity, genocide lead to the customary practice of „humanitarian intervention” and even the „responsibility to protect” (R2P). Without going into details of this due to limitations in content and length, according to E. Stowell, humanitarian intervention is the „justifiable use of force for the purpose of protecting the inhabitants of another State from treatment so arbitrary and persistently abusive as to exceed the limits within which the sovereign is presumed to act with reason and justice”.³¹⁸ The concept of the responsibility to protect goes a step further even. It is based on the idea that state sovereignty is not just a right but also a responsibility for the state to protect its people, and when that requirement is

³¹⁶ Eventes, 2018

³¹⁷ Fauser, p.5

³¹⁸ Daniel Wolf (1988): Humanitarian Intervention, Michigan Journal of International Law, Vol. 9 Iss. 1 p.334

not met by a state certain legal sanctions may be applied to the state by the international community as a whole or its representatives.³¹⁹

Before I move on to the assessment another key term must be clarified. Considering the migrant trajectory and the notions of security, when considering „state security”, as well as considering the people involved, we must distinguish between the security of the country of origin, the transit country, and the country of destination, as well as the security of migrant in the country of origin, in the transit country and the country of destination.

To sum up, in the following table I compiled a non-exhaustive list of security aspects interplaying with irregular migration considering the migrant trajectory as explained above:

³¹⁹ Mely Caballero-Anthony (2015) Community security: human security at 21, *Contemporary Politics*, 21:1, 53-69, p.58

	Country of Origin	Country of Destination (Transit Country)
State Security	<ul style="list-style-type: none"> • Push- and pull factors (low quality of life; labor migration; wage differences) • Internal sovereignty compromised • Internal insecurity 	<ul style="list-style-type: none"> • possible unemployment, the rise of informal economy, an underbudgeted burden on welfare state services • may entail cultural – or identity – implications • illicit activities associated with migration • tensions among the various groups of people in the host country, tensions regarding political refugees, xenophobia and racism • associated with – cross-border – crimes, such as human trafficking, smuggling, illegal facilitation of irregular migration, forgery, etc. • „liberal paradox”
Human Security of migrants	<ul style="list-style-type: none"> • Lack of protection of basic 1st and 2nd generation of human rights • Failed states, or states with low HDI • unless the state fulfills all requirements of human security in the 7 domains, people will be inclined to migrate to more prosperous, more peaceful, and more secure societies and states. 	<ul style="list-style-type: none"> • States must protect the rights of foreign citizens within their territory as well • „constitutive dilemma” • The human struggles of settling in cause insecurity in migrants and citizens alike – integration programs must be restarted

[Table 6 on Security concerns related to human mobility³²⁰]

In terms of the transit country, but more so, in terms of the country of destination, most recently, asylum seekers and migrants overall, have been labeled politically – mostly for domestic political gains – as a threat to national security, in Europe, North America, and Australia. It is commonplace by now to view the „state” as powerless against the immense

³²⁰ Rework of the original table published in Valéria Horváth: Human Insecurity – the focal point of irregular migration. In: Adrian Ivan, Cristian Gazdac, Claudiu Marian (ed.): New Perspectives on European (In)security. CA Publishing, Cluj-Napoca, Romania, 2020. p.159.

„waves” of migrants „invading” the country.³²¹ This resulted in fences, walls, fences and walls, and higher fences and higher walls. Inducing and then relying on this induced fear was an effective means of securitising the asylum and immigration processes and justifying violations of both domestic and international law.³²² This is an oversimplification of the underlying principles and concepts. The reference to state security may be abused by states in order to avoid additional sources of risk, which can thus result in simply making it more difficult for migrants to cross the border by reducing the number of available protection status. More specifically, based on Estevens’ four axes of the securitization of migration, and Weiner’s four dimensions of the security-migration-nexus³²³, I conclude that in the countries of transit and destination, migration may contribute to state insecurity in the following ways. Although migration may clearly have a positive impact on the host country, in terms of the changing demographics and labor shortages in certain countries, the negative socioeconomic implications of migration include possible unemployment, the rise of informal economy, and an underbudgeted burden on welfare state services. Migration involves the movement of persons with particular customs, traditions and sets of values, and therefore migration may entail cultural – or identity – implications, such as changing the composition of religious affiliations, and adopting or integrating new customs. There are also serious legal and political implications, such as illicit activities associated with migration and tensions among the various groups of people in the host country, tensions regarding political refugees, as well as xenophobia and racism, which nationalistic/populist political discourse building their political support and momentum very much prefer to over-emphasize and as such may create a vicious circle. Moreover, irregular migration seems to be a significant concern of states because states have a sovereign right to control who crosses their borders and who stays on their territory, and migrants who enter illegally or illegally over-stay, are perceived to undermine and therefore threaten the sovereignty of the country of transit or destination. States thus insist on reasserting their full sovereignty by stopping irregular migration. Furthermore, due to its illicit nature, irregular migration is usually associated with – cross-border – crimes³²⁴, such as human trafficking, smuggling, illegal facilitation of

³²¹ Aramide Odutayo (2016): Human security and the international refugee crisis, *Journal of Global Ethics*, 12:3, 365-379, p.366

³²² Odutayo p.366

³²³ Margit Fauser (2006): Transnational Migration – A National Security Risk? Securitization of Migration Policies in Germany, Spain and the United Kingdom, *Center for International Relations, Reports & Analyses*, 2/06

³²⁴ Sergei Metelev: Migration as a Threat to National Security, *Indian Journal of Science and Technology*, Vol 9(14), DOI: 10.17485/ijst/2016/v9i14/91086, April 2016, p.2

irregular migration, forgery, etc., which also adds to the perceived insecurity. Migration thus contributes to changes in social structures and institutions domestically, as well as globally. Considering also that the trajectory of a migrant may reach a number of countries, and thus the control of international migration requires international cooperation, the balance of power among states and the nature of conflicts in the international system may also be affected, consequently reducing state sovereignty.

Essentially, there are two conceptual problematics in relation to the migration-security nexus. Firstly, the state's interest to control immigration for state security reasons is limited by universal human rights stipulated in domestic laws and international conventions. This contradiction between state sovereignty and controlling borders, and the responsibility to promote and protect human rights is referred to the „liberal paradox” in migration studies.³²⁵ Secondly, the control of migration is crucial to national sovereignty, as national sovereignty is the underlying principle that delimits territorial borders and boundaries of membership. Similarly to the previously described „democratic dilemma”, the „constitutive dilemma” of liberal democracies pertains to the issues of political empowerment of migrants in a country of destination. As explained before, the principle of collective self-determination - including the determination over territorial borders and their protection - applies to citizens only, whereas universal human rights refer to everyone, including non-citizens. According to Fauser, on the one one hand, there are immigrants, refugees and asylum seekers with legitimate claims for reception or protection. On the other hand, there is the national constituency with a legitimate claim for deciding on these issues and for its own security. Most immigrants are non-citizens so they have no say in the decision that will also affect them. In fact, as Fauser explains, „in some cases they might even be more affected, as specific measures only apply to them, including the impossibility to enter a country and to stay there or the obligation to leave it”.³²⁶

At this point I must also raise awareness of the fact that, as Koser explains, although irregular migration occurs in significant numbers, in most countries it actually represents a fairly small proportion of the total immigration. Additionally, in politics as well as academic research, there is a prejudice against irregular migrants that they willingly engage in illicit activities, they are culturally intolerant and carry diseases.³²⁷ Ignorance, misrepresentation

³²⁵ Fauser, 2006, p.5

³²⁶ Fauser, p.1

³²⁷ Khalid Koser (2005) Irregular migration, state security and human security, A paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration at

and overall the prejudice negative perception of migration, however not only defines how irregular migration is governed but it also affects the regulations and international cooperation concerning regular migration. Bearing in mind the challenges to the ideals of state sovereignty posed by and through the processes of globalization, states – a.k.a central governments – fight tooth and nail to stay in control and to be perceived by their citizens to be in control.³²⁸ States are thus still primarily concerned with asserting their sovereignty over their territory and their citizens, and they pay little attention to non-citizens³²⁹, unless its to maintain national security and public order. As I explain in the next title, considerations of human security are yet to be incorporated.

Successful securitization of any issue consists of (1) identifying an existential threat (such as climate change, migration or Covid), (2) implementing emergency measures, such as declaring a state of emergency, and (3) achieving the effects of breaking free of the normal rules of politics and implementing extra-ordinary regulations.³³⁰ Buzan et al claim that security is a social construct and explain that securitization is an effective means to claim the right to handle something with less democratic control and constraint.³³¹

3.2.2. Securitization of the Environment: Environmental Security

Security studies is a field of international relations, which emerged to explain the causes of war and peace, focusing the role and the purpose of the state in inter-state relations. As such the ultimate function of the state is to guarantee the security of its people, and of itself. State survival comes before all else, and thus state security comes before all else.³³² As Elliot explains, this „adversarial model of security” is problematic in a few ways. Firstly, it runs the risk of militarising non-traditional insecurities, drawing attention away from the underlying causes. Secondly, it pays insufficient attention to the ways in which various forms of non-traditional insecurities – such as environmental degradation – might be amenable to cooperation rather than confrontation. Thirdly, it restricts who is able to contribute to this security discourse and precludes ideas and concepts that do not have states as the key

https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/t/p/TP5.pdf (Downloaded: 26 April, 2019) p.11

³²⁸ Koser, 2005, p.11

³²⁹ Oduyayo, 2016, p.374

³³⁰ B. Buzan, O. Waever, J. de Wilde: *Security – A new framework for analysis*. London: Lynne Reinner Publishers, 1998. p.26

³³¹ Buzan et al p.29

³³² Hannah Hughes: *Environmental Security*. In. Gabriela Kütting, Kyle Herman (eds.): *Global Environmental Politics*, Routledge, UK. 2018. pp.66-82. p.67

structures or agents.³³³ Thus during the 1980s, scholars began to question the adequacy of such a “state-centric, military approach” to security studies, and started to identify non-traditional threats to “national security”.

In this vein, Hughes uses “state security” in terms of traditional threats, such as military threats and war, and “national security” as a broader term to include non-traditional threats, such as terrorism, pandemics, migration, as well as environmental deterioration and climate change. Based on Hughes classification of the “types of security and what they identify as a threat/threatened”³³⁴, I compiled the following table:

[table 7 on security issues]

Security	Subject of security threat	Object as security concerns
State security	The State	Traditional threats: war, military advances, weapons of mass destruction
National security	The State	Non-traditional threats: terrorism, pandemics, migration, environmental deterioration, climate change as sources of inter-state conflict.
Environmental Security	The State	Environmental degradation, overpopulation and resource capacity depletion as sources of inter-state conflict.
Ecological Security	The Biosphere	State activities detrimental to the ecological systems and processes.
Climate Security	The State	The negative effects of climate change as sources of inter-state conflict.

Towards the end of the Cold War, together with the increasing number and intensity of environmental movements, which triggered the development of International Environmental Law, more and more attention was paid to environmental concerns in the context of the

³³³ Lorraine Elliott (2015) Human security/environmental security, *Contemporary Politics*, 21:1, 11-24 p. p-13

³³⁴ Hughes p. 67

international community. The term “Environmental Security” was first used in the Brundtland Report on Our Common Future,³³⁵ defining environmental degradation as the next great threat to national security.³³⁶ Matthews identified resource capacity, particularly water, for its potential to lead to inter-state conflict, and adds that consequent economic deterioration and political instability may lead to insecurity. Matthews also adds that “environmental refugees spread the disruption across borders”.³³⁷ Bearing in mind that in the Club of Rome’s report titled *Limit to Growth* established that our natural resources were finite and therefore there are limits to economic growth, the major concern of environmental security is resource scarcity, in light of the population boom experienced in the 20th century, giving rise to the claim of the Earth’s “overpopulation”³³⁸. Rather than the number of people using natural resources on the planet, it is the unequal distribution of such natural resources that cause inter-state problems. This is a classic state security concern, whereby a state tries to maximise its gains and resource potentials at the expense of other states. Scholarly literature refers to this as “resource wars”³³⁹, a downward spiral of conflict escalation, as the more resources we consume, the less finite resources we will have, the bigger the need to replace them and to start a conflict with another state in possession of such resources. As Homer-Dixon put it, environmental scarcity can contribute to civil violence, including insurgencies and ethnic clashes.³⁴⁰ Despite the difficulty in positioning precisely environmental scarcity in the causal chain of conflict, resource wars and more recently “climate wars”³⁴¹ are accepted widely by international scholars and relevant international organisations, such as the United Nations Environmental Programme. A typical example of such resource war is the conflict of Sudan

³³⁵ World Commission on Environment and Development, *Our Common Future Report*, 1987.

³³⁶ J. T. Matthews: *Redefining Security*, *Foreign Affairs*, (1989) 68(2), pp.162-177; Robert Kaplan: *The Coming Anarchy* in *The Atlantic Monthly*, 273 (2) 44-76.

³³⁷ Matthews 1989, p. 168

³³⁸ Although “overpopulation” serves as a simple answer to why we do not have enough to go around, it is an oversimplified statement in order to avoid the simple truth that our global economy and the first world lifestyle was not built on infinite natural resources, although available. However, the fundamental principle of economics is that the more scarcity there is of certain goods, the more demand and the more economic activity is connected to it. This is also evidenced by the backfire of the Kyoto Protocol, which resulted in a very lucrative global market of emission quotas instead of actual decrease in greenhouse gas emissions. The problem is not the number of people on the planet but the way and to the extent to which the Earth’s population uses its natural resources.

³³⁹ Hughes p.70

³⁴⁰ T. F. Homer-Dixon, *Thresholds of Turmoil: Environmental Scarcities and Violent Conflict* IN: DH Dudley, RA Matthew (eds): *Contested Ground: Security and Conflict in the New Environmental Politics*: Albany SUNY Press, 1999 p. 177

³⁴¹ G.Dyer: *Climate Wars: The Fight for Survival as the World Overheats*, Oxford, Oneworld Publications, 2011.; H. Welzer: *Climate Wars: What people will be killed for in the 21st century*. Cambridge: Polity Press, 2017.

and the birth of an independent South Sudan,³⁴² and the war in Syria and the birth of ISIS³⁴³. I will elaborate on these examples in the following chapter. As Hughes summarizes, critics of the notion of environmental security maintain that Homer-Dixons conflict thesis is ahistorical, disregarding colonial-historical unequal developments and structural injustices, as well as the fact that armed conflict itself is detrimental to the natural environment of its geographical location, and is dismissed by national security theorists as a globalist argument.³⁴⁴ However, after a fairly rapid evolution of the concept of environmental security, scholars started to deepen the meaning of environmental security. According to Hughes, Norman Myers shifted their perception of environmental concerns within the national security context to environmental issues within the human security context. I will elaborate on this in the next section.

Climate change can be perceived as a threat to individuals, the biosphere and the states as well. As an environmental security issue, climate change is most often presented as a threat multiplier that will overstretch societies' adaptive capacities and create or exacerbate political instability through civil unrest, intercommunal violence, political radicalisation and possibly even state failure. The environmental security problematic remains focused on maintaining order and stability and protecting (or securing) those values that are associated with statehood, such as political independence, territorial integrity and internal order.³⁴⁵ Unlike Hughes, I defined Climate Security as a threat to a state in terms of inter-state tension and even armed conflict caused by the sudden and slow onset negative effects of climate change, since the primary subjects of international law remain the states themselves. However, I maintain that separating climate change from other factors of environmental deterioration, the international community is underestimating the environmental challenges that the global community is facing today. On the other hand, breaking up the issues can be tackled, and the UNFCCC COPs have received media attention no environmental related convention has before. I will evaluate the actual success of the UNFCCC COPs in the following chapters.

At this point, in contrast to environmental, ecological and climate security, I would like to highlight the concept of environmental, ecological and climate justice. Climate

³⁴² UNEP: Sudan: post-Conflict Environmental Assessment. Nairobi, Kenya, UNEP. 2017, p.8

³⁴³ CP Kelley, S Mohtadi, MA Cane, R Seager, Y Kushnir: Climate Change in the Fertile Crescent and Implications of the Recent Syrian Drought. Proceedings of the National Academy of Sciences of the USA, 2015. 112(11), 3241-3246.

³⁴⁴ Hughes p.71-72.

³⁴⁵ Elliot p17

change models show that the developing world, the Global South, which is already pressured by food insecurity will likely be impacted worse by global warming, than the Global North, the industrialized, developed states, which carry most responsibility for anthropogenic climate change. That being said, the concept of climate justice complements the concept of climate security.

3.2.3. Shifting to the Human Security Paradigm

As Robert O. Keohane observed, the key concepts of international relations are constantly redefined and reinterpreted as the relations in the international community change.³⁴⁶ And while scholars of international security theory still reference state security as the governing and reigning paradigm of international relations³⁴⁷, the international community in fact is experiencing a fundamental shift in this security paradigm.³⁴⁸

Initially, this broadening of the security concept was propagated by the Copenhagen School, which emphasized the social dimensions of security and rejected the state as primary agent of security, considering novel threats to security, which require novel processes of securitization, such as preventive diplomacy, good governance, economic and social development.³⁴⁹ In 1994 the UN Development Program's Human Development Report introduced the concept of human security to mainstream development discourse with a call for a shift from a focus on the security of a territory to a focus on the security of individual humans.³⁵⁰ The UNDP's Human Development Report of 1994 identified seven dimensions of human security. In the table below, I briefly summarize what these dimensions entail, to better understand the concept.

[THE SEVEN DIMENSION OF HUMAN SECURITY TABLE 8]

Economic Security „Economic security requires an assured basic income-usually from productive and remunerative work, or in the last resort from some

³⁴⁶ Robert O. Keohane (2002): Ironies of Sovereignty: The European Union and the United States. IN: Journal of Common Market Studies 40(4) 743-65

³⁴⁷ Baldwin p.5

³⁴⁸ The notion of state security is directly derived from the concept of state sovereignty. This concept of state sovereignty is two dimensional. Internally, sovereignty means that there exists an ultimate authority over a particular people and territory, and this essentially possesses the „final and absolute political authority in the political community“. Externally, sovereignty means that the state is recognized by the international community as an independent entity and it is free from any external authority. (Biersteker & Weber p.2) According to Kenneth Waltz, it is thus up to the state to decide how it deals with the problems that arise internally and externally. (Biersteker & Weber p.5)

³⁴⁹ Estevens

³⁵⁰ Kumssa & Jones, p. 454

- publicly financed safety net. But only about a quarter of the world's people may at present be economically secure in this sense.”
- Food Security „Food security means that all people at all times have both physical and economic access to basic food. This requires not just enough food to go round. It requires that people have ready access to food—that they have an "entitlement" to food, by growing it for themselves, by buying it or by taking advantage of a public food distribution system.”
- Health Security „In both developing and industrial countries, the threats to health security are usually greater for the poorest, people in the rural areas and particularly children. [...]The disparities between rich and poor are similar for access to health services.”
- Environmental Security „Human beings rely on a healthy physical environment---curiously assuming that whatever damage they inflict on the earth, it will eventually recover. This clearly is not the case, for intensive industrialization and rapid population growth have put the planet under intolerable strain. The environmental threats countries are facing are a combination of the degradation of local ecosystems and that of the global system.”
- Personal Security „In poor nations and rich, human life is increasingly threatened by sudden, unpredictable violence. The threats take several forms: threats from the state (physical torture); threats from other states (war); threats from other groups of people (ethnic tension); threats from individuals or gangs against other individuals or gangs (crime, street violence); threats directed against women (rape, domestic violence); threats directed at children based on their vulnerability and dependence (child abuse); threats to self (suicide, drug use).”
- Community Security: „Most people derive security from their membership in a group - a family, a community, an organization, a racial or ethnic group that can provide a cultural identity and a reassuring set of values. Such groups also offer practical support.[...] But traditional communities can also perpetuate oppressive practices.”
- Political Security: „One of the most important aspects of human security is that people should be able to live in a society that honours their basic human rights.”

The seven dimensions of human security are always interrelated and complementary.³⁵¹ Therefore the dynamic and the mechanism of the seven dimensions of human security are demonstrated in the diagram.

Figure [3]. Seven Interrelated and Complementary Dimensions of Human Security³⁵²



It is rather a popular or mainstream approach in the political arena as well as in academic research to assess what implications migration has on state security, but it is rather a novel approach to assess insecurity in terms of the people migrating. Contemporary migration studies focus on the push and the pull-factors of migration but not so much emphasis is put on the perception of security of the individual migrant that initiates as well as accompanies migration throughout the trajectory of the migrant.³⁵³ Reiterating to the comprehensive approach of the human security concept to insecurity, it is evident that unless the state – the country of origin – fulfils all requirements of human security in the seven domains that the UNDP identified in the 1990s, people will be inclined to migrate to more prosperous, more peaceful, and more secure societies and states. Depending on which domain(s) of human security are affected, as well as on the nature and the extent of the insecurity, people might be (i) forced to flee – and seek asylum and refugee status elsewhere -; (ii) people might be displaced – and become internally displaced within their own state -; (iii) people may be forced to migrate cross-border by circumstances or, (iv) under the given circumstances, may

³⁵¹ Kumssa & Jones, 2010, p. 454

³⁵² Valéria Horváth: Human Insecurity – the focal point of irregular migration. In: Adrian Ivan, Cristian Gazdac, Claudiu Marian (ed.): *New Perspectives on European (In)security*. CA Publishing, Cluj-Napoca, Romania, 2020. p.152

³⁵³ Thomas Gammeltoft-Hansen – Ninna Nyberg Sorensen (ed): *The Migration Industry and the Commercialization of International Migration*. Routledge, New York, 2013. 302, p.7

choose to migrate cross-border. Taking into account that this basic act of survival cannot be suppressed, unless there are adequate domestic and/or international laws in place, the process of migration by definition will take place irregularly. Based on the processes of globalization, the novel threats to human security, migration cannot be stopped but it can be regulated.

Moreover, considering the actual movement and the arrival of the individual migrants, it must be reinforced that when migrants enter other countries irregularly, they are subjected to human trafficking and smuggling networks, which have resulted in thousands of lives lost already. And even if they arrive safely, settling in poses the same threats of exploitation, which contribute in their economic, legal, social and political marginalisation, creating a sense of personal insecurity for them and tensions between them and the locals. As Fauser explains: „for the benefit of immigrants and hosting communities, prevention of marginalisation, discrimination, urban segregation and social disruption are essential to ensure social stability”.³⁵⁴ As Fisher explains, „human insecurity caused by biophysical environmental change can be intensified by insufficient national political and developmental capacity, leading to potential local conflict and national insecurity” and „as a result, the risk to national security may be both a cause and a consequence of human insecurity”.³⁵⁵

3.2.4. Conclusions: Oversecuritization and the Shift in Security Paradigms

There are a number of obvious conclusions that can be drawn from the above. Firstly, state insecurity, environmental insecurity and human insecurity all explain human mobility. Secondly, since the 1980s, there is a tendency to securitise non-traditional areas of social activity, such as human mobility, and even objective circumstances, such as our natural environment. This obsessive wish to control leads to oversecuritization, crying wolf at any and all points in time. However, traditional security models are inappropriate for dealing with non-traditional and human security threats, and this oversecuritization hinders creative and successful solutions to environmental insecurity. Although scholars of security theory still reference state security as the governing and reigning paradigm of international relations, it is claimed that the international community in fact is experiencing a fundamental shift in this security paradigm. It is my understanding that the emergence of novel ways of dealing with novel security threats, is not so much a shift in security paradigm, since the state is still considered to have the right and the responsibility to protect its people, and the principal

³⁵⁴ Fauser, p.14

³⁵⁵ Fisher p.297

actors of international relations are still states - creating essentially an intergovernmental community - but a readjustment of focus on the people, who make up the state.

It is regarding these security considerations that the UNDP stipulated that the control of international migration is not just an administrative issue³⁵⁶ and suggested the comprehensive – political - approach of sustainable human development based on the concept of human security. In practice this meant real, conceptual, political, material and financial support from the United Nations, as the UN Commission on Human Security was established and even a UN Trust Fund for Human Security was set up with the slogan: „Freedom from want, freedom from fear, freedom to live in dignity.³⁵⁷ This approach must be revisited in both the country of origin and the country of destination. Through the sustainable human development strategy invoked by the UNDP, promoting development in the country of origin may reinforce – human – security, and therefore contribute to the control of migration processes.³⁵⁸ At the same time, based on Fauser’s reasoning in favor of the socio-economic inclusion of migrants in the host countries³⁵⁹, I would go as far as to say that by promoting the political, legal, and socio-economic inclusion of individual – as well as groups of – migrants, as opposed to penalizing (irregular) migration, their sense of – human - security of migrants and locals alike would be reinforced, which would in effect entail the reinforcement of internal as well as external sovereignty of the state and ensure state security.

3.3.Chapter conclusions: Classification of Human Mobility

Assessing the literature on the drivers, the push-and-pull factors, the perceptions and insecurities of persons of concern, categorizing human mobility according to its motivation or causes, I recognize the following:

- a) personal,
- b) economic (including food security, water security, labor security)
- c) political,
- d) community,
- e) environmental,
- f) any combination of the above or all of them affecting the person of concern at once cumulatively or structurally.

³⁵⁶ 1994 Human Development Report, p.35

³⁵⁷ <https://www.un.org/humansecurity/> (Downloaded: 29 April, 2019)

³⁵⁸ Francesca Vietti (2013): Human Insecurity: Understanding International Migration from a Human Security Perspective, *Journal on Migration and Human Security*, Volume 1 Number 1 17-31, p.21

³⁵⁹ Fauser, p.14

Assessing the literature on human mobility, I formulated the following categories and types of human mobility from the perspective of an individual person of concern, and distinguish these throughout this dissertation accordingly:

- a) international (or cross-border) and domestic mobility,
- b) voluntary, involuntary (displacement) and forced,
- c) seasonal or circular, temporary and permanent,
- d) individual, familial, or *en masse*,
- e) irregular or regular,
- f) autonomous or facilitated
- g) emigration, transit and immigration,
- h) free movement, permitted movement, or prohibited movement,
- i) evacuation and relocation.

Human mobility may be considered as a single unit, but it is more practical in terms of dignified human mobility management, to consider its elements. There are three basic elements, which always occur, and there are two other elements, which occur in certain cases:

- a) leaving the country of origin,
- b) arriving in the country of destination,
- c) staying in the country of destination, as well as
- d) passing through a country of transit, and
- e) having to leave the country of transit or the destination (expulsion).

Thus “international human mobility” is a movement of a person or a group of persons through an internationally recognised state border, either voluntarily or involuntarily, for whatever reasons and for however long. In this vein, “environmentally induced human mobility” is the movement of a person within or across an internationally recognised state border due to environmental disasters or degradation, either voluntarily or involuntarily, for however long; and “climate change induced human mobility” is the movement of a person or a group of persons, across an internationally recognised state border or within a state border, either voluntarily or involuntarily, for however long, due to gradual or rapid onset effects of climate change, affecting the habitual place of residence of a person of concern.

CHAPTER 4. OBSERVING CERTAIN ASPECTS OF ENVIRONMENTALLY INDUCED HUMAN MOBILITY UNDER RELEVANT AREAS OF INTERNATIONAL LAW

In this chapter, I will assess relevant areas of international law which do or potentially pertain to environmentally induced human mobility, including climate change induced human mobility, apart from the obvious international legal framework on human mobility, which I will assess in the following chapter.

Having explained where the sovereignty of the state ends and where the international obligation to defend human rights and avert humanitarian disaster starts, I will now move on to explain which areas of international law are most relevant, and which may serve as a potential framework for the international community. According to the World Bank, the international community lacks the legal institutions and processes to address the needs of the affected populations and “to cope with the resulting migration from the affected areas”.³⁶⁰ Without an appropriate legal definition, the phenomenon to be defined cannot be implanted into an appropriate branch of law, which can leave states impotent and unable to act legally. Moreover, an inappropriate definition cannot fulfill its purpose and function effectively within a given legal framework, leaving vulnerable people without protection. In order to be able to come up with a relevant and practically applicable definition, we must assess those systems of norms within international law that could potentially accommodate the regularization of environmentally induced human mobility, and in particular climate change induced human mobility.

It is my understanding that international law regulates only certain aspects of environmentally induced human mobility. Some of these areas of international law are well-established, classic branches of international law, and some fields are just emerging or are still evolving.

4.1. INTERNATIONAL ENVIRONMENTAL LAW AND THE INTERNATIONAL LAW ON CLIMATE PROTECTION

In the beginning of 2023, the General Assembly submitted a request for an advisory opinion of the ICJ concerning the obligations of states in respect of climate change.³⁶¹ The legal sources of state obligations concerning climate protection were the UN Charter, the ICCPR

³⁶⁰ World Bank Migration and Development Brief 2016.

³⁶¹ GA Res 77/276 <https://www.icj-cij.org/sites/default/files/case-related/187/187-20230420-ORD-01-00-EN.pdf>

and the ICESCR, the UNFCCC and the Paris Agreement, the UNCLOS, as well as the “duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment”. The explicit questions of the international community are:

- a) what are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;
- b) what are the legal consequences under these obligations for States, where they by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:
 - (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?
 - (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?

It is beyond the scope of this dissertation to provide or at least try to provide answers to these questions, but various aspects of these questions will be touched upon throughout the paper.

4.1.1. International Environmental Protection

International Environmental Law started evolving in the second half of the 20th century, when states domestically started realising that environmental deterioration caused by rapid and vast scale industrialisation and motorisation was harming the health of their citizens. In 1972³⁶², the UN convened the first ever UN Conference on the Human Environment, which issued the Stockholm Declaration on the Human Environment establishing the principles and guidelines of international environmental law. At the same time, the Club of Rome published its report titled *The Limits to Growth*, which concluded that natural resources are not at humanity’s unlimited and infinite disposal and thus the natural environment may be incapable of sustaining a healthy and satisfactory human existence. In 1987, the World Commission on Environment and Development was set up, which issued a report titled *Our Common Future*, introducing and defining the term „sustainable development”. In 1992, the so-

³⁶² By the 1970s, the international community started realising that their economies were increasingly dependent on natural resources that were depleting.

called Earth Summit, the UN Conference on Environment and Development was held, where international environmental law and global environmental policy gained momentum. The Rio Declaration and the Agenda 21, the UN Biodiversity Convention and the UN Framework Convention on Climate Change, the Global Environmental Facility and the United Nations Environmental Program were all established in Rio de Janeiro. Currently, there are around 50 multilateral environmental conventions, and almost 20 international organisations which have environmental concerns in their mandate.

Some of the main characteristics of International Environmental Law is that it is a very particular area of international law for a number of reasons. First of all, regarding its sources, international conventional law is combatting state practice, which manifests itself in pollution and environmental degradation caused directly by state actors or indirectly through the lack of adequate domestic regulations. Secondly, environmental protection, the essence of international environmental law, is a delicate issue. All intergovernmental environmental initiatives so far follow a human-centric approach, focus on the „human environment”, and try to establish (and protect) the interlink between our natural environment and economic development. Even sustainable development is a concept that serves future and permanent economic growth. In this respect, international environmental law is not so much concerned with the actual protection of nature on its own merits but rather perceives the natural environment as an abundance of natural resources to be used for the (economic) prosperity of humanity. Some international events such as the oil crisis of the 1970s, and the fact that sometimes war lords challenging the status quo of international economic relations, control strategic mines and resources for example in Africa, have allowed the international community to see that such natural resources were finite, one way or the other, and so international regulation was necessary. Thirdly, effective environmental protection would cut to the core of national economies therefore the states were reluctant to give up their sovereignty and transfer parts of it to a well-established international organisation, therefore only a „programme” for environmental issues was set up. In the same vein, environmental protection, green transformation is capital and investment intensive, therefore right away an environmental fund was set up. Lastly, in addition to the fact that international environmental law is a regulator of inter-state relations in its classic sense, such as the trans-border nature of environmental pollution and the common and differentiated responsibility for it, this body of international law also recognises the common heritage of humanity. Therefore states are required by international law to implement domestic regulations to protect certain elements

of the environment, to discourage certain polluting practices through public policy and to mitigate global environmental harm.

International environmental law protects elements of the environment and seeks to prevent environmental degradation and anthropogenic environmental disasters. Natural environmental disasters are not a concern for international environmental law. International environmental law is thus limited to human contributions, human gains, and disaster relief in terms of natural disasters, including prevention and mitigation, is left to a completely separate body of law but I will introduce International Disaster Response Law in the next section.

In the table below I collected the general principles of international environmental law to better demonstrate the expectations of the international community from its member states. These principles of international environmental law have been incorporated in the Stockholm Declaration of the UN Conference on the Human Environment and the Rio Declaration of the first Earth Summit. Such declarations of the State Parties to the conference are considered “soft-law”. Boyle describes soft-law as a variety of non-legally binding instruments used in contemporary international relations by states and international organisations, such as these inter-state conference declarations. Other soft-law instruments include UNGA instruments, codes of conduct, guidelines, and recommendations of international organisations.³⁶³ However, these principles have been partly incorporated in the preambles of international environmental conventions and have been confirmed as established rules of international law by the International Court of Justice. Therefore, these principles serve as the foundation and the framework for environmental protection, the mitigation of environmental degradation and the prevention of environmental disasters.

Table 9. Principles of International Environmental Law

Prohibition of cross-border pollution	Rio Declaration principle #2: States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, <u>and</u> the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the
---------------------------------------	--

³⁶³ Alan Boyle: Soft-law in international law-making IN: Malcolm D Evans (ed): International law (3rd edition), Oxford, 2010 p.124

	environment of other States or of areas beyond the limits of national jurisdiction.
Principle of common but differentiated responsibility	Rio Declaration, principle #7 In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities.
Integration principle	Rio declaration principle #4 In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.
Precautionary principle	Rio Declaration, principle #15 In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.
Prevention principle	Stockholm Declaration principle #7 States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm Living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.
Reparation/ Polluter pays principle	Rio declaration, principle #16 <u>National authorities should endeavour to promote the internalization of environmental costs</u> and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.
Principle of Cooperation	Rio Declaration, principle #27 States and people shall cooperate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.
Public participation principle	Rio Declaration, principle #10

	At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes.
Principle of Sustainable Development	Our Common Future Report Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

It is imperative to explicitly remind ourselves of the fundamental principles of international environmental law for a number of reasons. The principles cover all areas of environmental protection that are or should be regulated under international law. In this vein, the principles of environmental protection can be narrowed down and focused to be applied to climate protection. When the object of the principles is the climate, the Prohibition of Cross-Border Pollution, the Reparation Principle or the Polluter Pays Principle, the Principle of Common but differentiated principle all substantiate the responsibility of industrialised states, which emit greenhouse gases and thus contribute to climate change the most. Common but differentiated responsibility is firmly rooted in climate change law, therefore conceptually from academia there could be more emphasis on the elaborating these principles focusing on climate protection. Moreover, the Principle of Prevention, Precaution, Integration, Cooperation and Public Participation are highly relevant in designing climate change mitigation and adaptation efforts internationally.

Additionally, the concept of Sustainable Development has outgrown itself as a principle of international environmental law. With the announcement and the introduction of the Sustainable Development Goals in 2015, the UN – relying on local and international non-governmental agencies – has been pushing for a paradigm shift. Although the Sustainable Development goals, similarly to their predecessors the Millennium Development Goals proved to be too ambitious and too demanding of the members of the international community, as particular goals, the who concept evolved into a paradigm, that we are in the early stages of at the moment. In my understanding Sustainable Development is in the 21st century what the Human Rights Based approach was of the 20th century.

Furthermore, in terms of environmentally induced human mobility, these principles of international environmental law may also be translated to apply to environmentally

induced human mobility, in case the international community decided to treat the issue or managing the “risk” of environmentally induced human mobility as an area of environmental law, or in particular climate change law, in the form of a separate convention under the UNFCCC or a protocol to the Paris Agreement.

At this point, I would like to highlight the precautionary principle as an example of how a principle of international environmental law may be translated to address environmentally or climate change induced human mobility. The obligation of prevention entails the duty to regulate, to supervise and monitor, and the precautionary principle requires conducting and approving environmental impact assessments, to prepare a contingency plan, and to mitigate if environmental damage occurs.³⁶⁴ This requirement was translated into a regional, multilateral international convention in Europe, namely the 1991 Convention on Environmental Impact Assessment in a Transboundary Context, also known as the Espoo Convention. An environmental impact assessment is a national procedure for evaluating the likely impact of a proposed activity on the environment to be conducted at project level, in a transboundary context. The Espoo Convention’s Appendix II prescribes the following as the minimum requirements of the contents of an environmental impact assessment: a) a description of the proposed activity and its purposes; (b) a description, where appropriate, of reasonable alternatives (for example, locational or technological) to the proposed activity and also the no-action alternatives; (c) a description of the environment likely to be significantly affected by the proposed activity and its alternatives; (d) a description of the potential environmental impact of the proposed activity and its alternatives and an estimation of its significance; (e) a description of mitigation measures to keep adverse environmental impact to a minimum; (f) an explicit indication of predictive methods and underlying assumptions as well as the relevant environmental data used); (g) an identification of gaps in knowledge and uncertainties encountered in compiling the required information; (h) where appropriate, an outline for monitoring and management programmes and any plans for post-project analysis); and even (i) a non-technical summary including a visual presentation as appropriate (maps, graphs, etc.). Bearing in mind that environmental impact assessments focus on impacts on the environment, assessing social impacts is not explicitly required at a minimum. This leaves a window of opportunity to take an already existing legal tool and transform it in a way that it also takes into account the social consequences, such as the human mobility

³⁶⁴ Inter-American Court of Human Rights Advisory Opinion OC-23/17 on state obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity: interpretation and scope of articles 4(1) and 5(1) in relation to articles 1(1) and 2 of the American Convention on Human rights.

aspects of development projects and possible environmental hazards caused by human activity.

This window of opportunity truly is a plausible measure, as prescribing the assessment of a broader impact is not without example. The 1992 International Convention on Biological Diversity³⁶⁵ requires State Parties to conduct environmental impact assessments in order to avoid or minimize the significant adverse effects on biological diversity. The State Parties at the 7th Conference of the Parties adopted the Akwé: Kon guidelines on conducting cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities to create. The aim was to create a ten-step process within a collaborative framework for the various stakeholders.³⁶⁶

[The Aké: Kon Guidelines table 12]

1. Notification and public consultation of the proposed development by the proponent;
2. Identification of indigenous and local communities and relevant stakeholders likely to be affected by the proposed development;
3. Establishment of effective mechanisms for indigenous and local community participation, including for the participation of women, the youth, the elderly and other vulnerable groups, in the impact assessment processes;
4. Establishment of an agreed process for recording the views and concerns of the members of the indigenous or local community whose interests are likely to be impacted by a proposed development;

³⁶⁵ Article 14: „1. Each Contracting Party, as far as possible and as appropriate, shall:

(a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures;

(b) Introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account;

(c) Promote, on the basis of reciprocity, notification, exchange of information and consultation on activities under their jurisdiction or control which are likely to significantly affect adversely the biological diversity of other States or areas beyond the limits of national jurisdiction, by encouraging the conclusion of bilateral, regional or multilateral arrangements, as appropriate;

(d) In the case of imminent or grave danger or damage, originating under its jurisdiction or control, to biological diversity within the area under jurisdiction of other States or in areas beyond the limits of national jurisdiction, notify immediately the potentially affected States of such danger or damage, as well as initiate action to prevent or minimize such danger or damage; and

(e) Promote national arrangements for emergency responses to activities or events, whether caused naturally or otherwise, which present a grave and imminent danger to biological diversity and encourage international cooperation to supplement such national efforts and, where appropriate and agreed by the States or regional economic integration organizations concerned, to establish joint contingency plans.”

³⁶⁶ <https://www.cbd.int/doc/publications/akwe-brochure-en.pdf>

5. Establishment of a process whereby local and indigenous communities may have the option to accept or oppose a proposed development that may impact on their community;
6. Identification and provision of sufficient human, financial, technical and legal resources for effective indigenous and local community participation in all phases of impact assessment procedures;
7. Establishment of an environmental management or monitoring plan (EMP), including contingency plans regarding possible adverse cultural, environmental and social impacts resulting from a proposed development;
8. Identification of actors responsible for liability, redress, insurance and compensation;
9. Conclusion, as appropriate, of agreements, or action plans, on mutually agreed terms, between the proponent of the proposed development and the affected indigenous and local communities, for the implementation of measures to prevent or mitigate any negative impacts of the proposed development;
10. Establishment of a review and appeals process.

Furthermore, this requirement of conducting impact assessments created the grounds for the Conference of the Parties of the Biodiversity Convention, to examine the issue of liability and redress, including restoration and compensation, for damage to biological diversity, except where such liability is a purely internal matter.³⁶⁷

One of the main criticisms of international environmental law is that there are too many environmental agreements and a lack of effective coordination.³⁶⁸ In the next section, I will thus focus on the particular architecture and the quality of coordination of this architecture in the field of international climate protection.

4.1.2. International Climate Protection

Currently one of the most prominent fields of international environmental law is the international law on climate protection. Although Bodansky et al maintain that in itself, the international law pertaining to climate change is “not a discrete body of law” and that “it sits within the fields of international environmental law”, they reference it as “International Climate Change Law”.³⁶⁹ Referring back to the distinctions and definitions of environment and climate in the first chapter, I find this classification misleading since it shifts focus from the

³⁶⁷ Biodiversity Convention art 14 (2)

³⁶⁸ Prieur p.2.

³⁶⁹ Bodansky et al p.11

fact that climate protection is not a standalone purpose of international law. In fact, climate protection technically only makes sense within the wider framework of environmental protection. Nevertheless, even as a sub- field of the international environmental law on climate protection focuses on four basic issues: (i) mitigation of climate change, (ii) adaptation to climate change, (iii) financial and other means of support for mitigation and adaptation efforts, and (iv) international supervision to promote implementation and compliance.³⁷⁰ In terms of its objectives, at the moment, climate protection is focused on avoiding a global disaster in the distant future, and focuses less on near-term extreme weather events (perturbations) made more severe and more frequent.³⁷¹

The primary legal document on climate protection is the United Nations Framework Convention on Climate Change, adopted in 1992 at the Earth Summit in Rio de Janeiro, at the same time as the Rio Declaration and other tools of international environmental law described above. The UNFCCC establishes as its „ultimate objective” to prevent dangerous anthropogenic interference with the climate system³⁷², and provides³⁷³ guiding principles on how to achieve this ultimate objective. The UNFCCC’s institutional treaty bodies are the Conference of the Parties (COP) as the supreme body, with two permanent subsidiary bodies, the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI). The State Parties also have the right to establish ad hoc bodies, however to this date the Ad Hoc Working Group on the Durban Platform for Enhanced Action, has been disbanded. In addition to the organisational structure, the UNFCCC also includes financial mechanisms, which is entrusted upon the independent Global Environment Facility, which provides funding for other environmental treaties as well.³⁷⁴ As a framework convention, the UNFCCC was complemented by the Kyoto Protocol, which was subsequently replaced by the Paris Agreement in 2015.

The UNFCCC references principles as „equity” and „common but differentiated responsibilities and respective capabilities”, the interests of present and future generations, the precautionary principle, as well as the right to promote sustainable development, among others. According to the UNFCCC, the change in the Earth’s climate and its adverse effects are

³⁷⁰ Bodansky et al p.11

³⁷¹ Stephens, p.173

³⁷² UNFCCC art. 2.

³⁷³ UNFCCC art. 3

³⁷⁴ Joanna Depledge: The Legal and Policy Framework of the United Nations Climate Change Regime. IN: Daniel Klein-Maria Pia Carazo-Meinhard Doelle, Jane Bulmer, Andrew Higham (eds): The Paris Agreement on Climate Change, OUP, 2017.pp. 27-43 p.32

a common concern of humankind.³⁷⁵ Thus the UNFCCC, together with the Paris Agreement, is built on the principle of common but differentiated responsibility. To understand this principle, we must revisit the rules on state responsibility for environmental harm and the issues around it.

Under customary international law, and the ILC's Draft Articles on the Responsibility of States for Internationally Wrongful Acts, if a state commits an internationally wrongful act by for example violating the no-harm rule, the injured state is entitled to demand cessation of the violation and claim reparation from the responsible state. Should the state not comply with these secondary obligations, the injured state would be entitled to take counter-measures against the responsible state.³⁷⁶ For an individual state to have a legal basis to challenge the conduct of another state for climate-related injuries or threats, it would have to show that the other state had breached the no-harm rule or its related procedural duties.³⁷⁷ This would require demonstrating that activities under the jurisdiction or control of the other state have caused, or entail a quantifiable risk of causing, significant harm in the claimant state's territory. Showing significant harm should not be difficult with results such as sea-level rise, floods, droughts and heatwaves. Although modelling and attribution capacities are improving, it is still difficult to establish whether there is sufficient probability that a particular weather event or impact was in fact caused by human action, as opposed to other factors. A claimant state would have to establish the other state's causal contribution to that risk. Additionally, states are only required to practice due diligence in the prevention of climate change under the precautionary principle. The claimant state would have to establish that the defendant state had failed to take reasonable and appropriate regulatory and enforcement measures to curb greenhouse gas emissions from activities under its jurisdiction. So far states have nor formally invoked the law of state responsibility for climate change related injuries. Small Island states while signing the UNFCCC, the Kyoto Protocol as well as the Paris Agreement, that their signature and ratification in no way can be understood as renunciation of any rights under international law concerning state responsibility for the adverse effects of climate change and that no provision [...] can be interpreted as derogating from principles of general international law".³⁷⁸ In 2002 Tuvalu publicly threatened to bring Australia and

³⁷⁵ This commonality is also evidenced by: Moon convention „province of all mankind", waterfowl are an international resource (wetlands convention 1971); 1972 World Heritage convention: natural and cultural heritage as world heritage of mankind as a whole; Seabed is common heritage of mankind. Philippe Sands and Jacqueline Peel (eds): Principles of International Environmental Law, Cambridge, 2018 p.245

³⁷⁶ Bodansky et al. p.44

³⁷⁷ Bodansky et al p.45

³⁷⁸ Bodansky p.46

the US before the ICJ for their contributions to climate change. The US consent would have been necessary for the ICJ case but either way Tuvalu did not pursue. In 2011, Palau also announced its plan to seek an advisory opinion from the ICJ on whether other states carry international responsibility for any activities on their territory that emit greenhouse gases do not harm other states. In a letter to the Czech Ministry of the Environment, Micronesia asserted that the project's climate change impacts could affect its territory and requested a transboundary environmental impact assessment. An independent firm confirmed Micronesia's suspicions and found that the modernization project did not meet the best available technology standard. The project wasn't called off but the Ministry asked for compensation regimes from the proponent company.³⁷⁹

In contrast to invoking a state's individual responsibility, the UNFCCC relied on the international community members' common but differentiated responsibility. Common but differentiated responsibility is compiled of two elements: on the one hand, the contribution to the creation of a particular environmental problem and on the other hand, its ability to prevent, reduce and control the threat.³⁸⁰ Consequently, this entitles or may even require all concerned states to participate in international response measures aimed at addressing environmental problems, and this leads to environmental standards that impose differing obligations on states.

Common responsibility is likely to apply to cases where the natural resource to be protected is not the property of, or not under the exclusive jurisdiction of a single state, or a few particular states.³⁸¹

The UN Conference on the Environment and Development tried to allocate future responsibilities for environmental protection among states at different levels of economic development, which have contributed in different degrees to particular problems, and which have different environmental and development needs and priorities.³⁸² The key concept is to integrate environmental considerations into economic development.³⁸³ Building on the common but differentiated responsibility of contracting state parties, the UNFCCC requires developed countries, namely 43 countries according to its Annex 1, to take the lead in climate change mitigation.³⁸⁴ The requirement of developed countries to lead is also reflected in a

³⁷⁹ Bodansky et al p.47

³⁸⁰ Sands p. 244

³⁸¹ Sands p.245

³⁸² Sands p. 225

³⁸³ Sands p. 227

³⁸⁴ Such countries are the OECD countries at the time of the signing of the UNFCCC and some Central Eastern European countries transiting to market economies. Depledge p.29.

commitment to provide financial resources³⁸⁵ and to promote, facilitate and finance the transfer of technology to developing countries.³⁸⁶³⁸⁷ The UNFCCC thus divides the world into developed and developing countries. This binary division of the world is more nuanced at closer examination. At the time of the signature of the UNFCCC, some European countries were still in transition to a new political regime and a market economy, so in fact only Annex II countries had to take the lead initially, and the transitioning European states had more flexibility. Among the developing countries, the UNFCCC also recognizes some least developed countries (LDC), granting them special treatment regarding funding. Countries are also free to join Annex I, and to oblige themselves to be bound by mitigation requirements pertaining to them but so far only Kazakhstan joined Annex 1 countries voluntarily, in 2001.³⁸⁸ Additionally, reflecting the vulnerable regions and hotspots approach described in previous chapters, the UNFCCC highlights the most vulnerable countries and hotspots:³⁸⁹

„Parties shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet these specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures, especially on: (a) Small island countries; (b) Countries with low-lying coastal areas; (c) Countries with arid and semi-arid areas, forested areas and areas liable to forest decay; (d) Countries with areas prone to natural disasters; (e) Countries with areas liable to drought and desertification; (f) Countries with areas of high urban atmospheric pollution; (g) Countries with areas with fragile ecosystems, including mountainous ecosystems; (h) Countries whose economies are highly dependent on income generated from the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products; and (i) Land-locked and transit countries.”

Being a framework convention, it was at the first COP held in Berlin that the Kyoto Protocol was signed to strengthen the obligations of Annex 1 Parties and to develop a quantified limitation and reduction objective.³⁹⁰ The Kyoto Protocol was to be strengthened and broadened over time, which happened through the Doha Amendment during COP 18. Slow acceptance already showed the reluctance of pursuing stricter aims and envisaged the failure

³⁸⁵ UNFCCC art. 4.3. and 4.4.

³⁸⁶ UNFCCC art 4.5.

³⁸⁷ Depledge p.29

³⁸⁸ Depledge p.31

³⁸⁹ UNFCCC Art. 4.8.

³⁹⁰ Depledge p.33

of the Kyoto Protocol. The States who have remained parties between 2008 and 2012 reached almost 100% of their targets in the first target period.³⁹¹ Unfortunately, the Kyoto Protocol failed to deliver on its expectations of the State Parties, and instead created a super lucrative market for emission quotas. It became clear to the international community that the Kyoto Protocol and its legal regime needs to be replaced by another legal instrument upon expiry. Recognising that essentially the Kyoto Protocol to the UNFCCC was unable to reach its goal, in terms of reducing the emissions of greenhouse gases, the COP held in 2015 in Paris witnessed an unprecedented level of international cooperation, as over 190 states, including India and China, committed to reduce their greenhouse gas emissions. In 2015, the Paris Agreement was signed to establish issue-specific, which are less formal and enable in-depth discussions. The issues were mitigation, adaptation, finance, technology, transparency (state reporting), land-use change and forestry, market mechanisms, capacity building, support for less developed countries, implementation of response measures, loss and damage, education and outreach.³⁹²

In terms of climate change induced human mobility, the UNFCCC itself is silent on the topic and has not yet articulated any legal obligations, not even soft-law requirements. As mentioned above, the principle of common but differentiated responsibility principle and the principle of equity were operationalized in the climate change regime through the categorization of parties into developed and developing countries.³⁹³ While equity was understood mostly in terms of sustainable development and access to clean development mechanisms, and funds for transitions, the principle of common but differentiated responsibility raised the issue of dealing with loss and damage due to climate change. The Alliance of Small Island States (AOSIS) proposed in 1991 to establish an international insurance pool, which among other things, would have compensated vulnerable small island and other low-lying developing states for loss and damage resulting from sea level rise. The actual proposal failed but AOSIS remains persistent to this day. The issue eventually re-entered the Convention process in the 2007 Bali Action Plan.³⁹⁴ Subsequently, the Copenhagen conference in 2009 failed to deliver once again a successful outcome but the 2010 Cancún Agreements

³⁹¹ Depledge p.35

³⁹² Depledge p. 36

³⁹³ Lavanya Rajamani: Guiding Principles and General Obligation. IN: Daniel Klein, María Pía Carazo, Meinhard Doelle, Jane Bulmer, and Andrew Higham (eds.): *The Paris Agreement on Climate Change: Analysis and Commentary*. Oxford, UK, Oxford University Press, 2017 pp. 131-140 p. 132

³⁹⁴ Linda Siegele: Loss and Damage (Art. 8.) IN: Daniel Klein, María Pía Carazo, Meinhard Doelle, Jane Bulmer, and Andrew Higham (eds.): *The Paris Agreement on Climate Change: Analysis and Commentary*. Oxford, UK, Oxford University Press, 2017 pp.224-238 p. 225

bring about a certain extent of change. The UNFCCC SBI was tasked to create a work programme related to loss and damage due to climate change, and both extreme weather events and slow onset events were to be considered and an Adaptation Committee was established.³⁹⁵ Additionally, the 2010 Cancún Agreements also established a new Green Climate Fund.³⁹⁶ Since the Cancún Agreements only invite state parties to enhance actions on adaptation, without identifying developed countries as holders of enhanced responsibility, information exchange, research and policy development gained momentum, in particular through the state-led multi-stakeholder Nansen Initiative.³⁹⁷

Subsequently, it is at the 2012 COP that State Parties agree to address loss and damage under the UNFCCC and in 2013, Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts (Warsaw International Mechanism or WIM) is set up, placing it within the adaptation architecture, managed by the executive committee.³⁹⁸ The three functions of the WIM based on Decision 2/CP.29 para 5. is to enhance knowledge and understanding of comprehensive risk management approaches, to strengthen dialogue, coordination, coherence, and synergies among relevant stakeholders, and to enhance action and support, including finance, technology and capacity-building.³⁹⁹ In this respect, WIM is not a measure of implementation but a means of coordination not implementation.⁴⁰⁰

In the run-up to the Paris Summit, at COP21, UNHCR published the Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation, and the Advisory Group on Climate Change and Human Mobility lobbied extensively for ‘human mobility’ to incorporate planned relocation and to be integrated into the Paris Agreement.⁴⁰¹ Consequently, the Paris Agreement in December 2015 established a new mechanism, the Task Force on Displacement with the aim to develop recommendations for integrated approaches to avert, minimise and address displacement related to the adverse impact of climate change.⁴⁰² As a result, currently the Paris Agreement provides an opportunity to deal with climate change induced mobility under the themes of adaptation as well as loss and damage. In its preamble the Paris Agreement includes a single, exclusive reference to

³⁹⁵ Siegele p.226

³⁹⁶ Depledge p.32

³⁹⁷ Bodansky et al (2017) p.326

³⁹⁸ However vulnerable states want to treat it separately from adaptation, as scientifically adaptation has its limits. Siegele p.224

³⁹⁹ Siegele p.234

⁴⁰⁰ Siegele p.234

⁴⁰¹ Schade p.149

⁴⁰² Elisa Fornalé: Labour mobility options as adaptation strategies to environmental changes. In: Dimitra Manour – Andrew Baldwin – Dug Cubie – Anja Mihr – Teresa Thorp (eds.): Climate Change, Migration and Human Rights. Routledge, 2017 p.203

climate change induce human mobility: parties should, when taking action to address climate change, respect, promote, and consider their respective obligations to human rights, including the rights of migrants. Unfortunately, even this preambular reference contains a further restriction. State parties are only required to protect the rights of migrants to the extent that their otherwise respective obligation to migrants so requires it.⁴⁰³

In general, adaptation involves anticipating the adverse effects of climate change and taking appropriate action to prevent or minimize the damage they can cause.⁴⁰⁴ Bodansky et al identify three rationales for adaptation mechanisms, which could also be applied in order to include measures related to climate change induced human mobility. First, since the biggest impacts of climate change will fall on states that contribute little to the problem, the countries that are causing the problem should as a matter of “restorative” justice provide assistance to those that will bear a disproportionate share of the burden. Second, the most vulnerable countries to climate change are also the most vulnerable in terms of development, therefore the international community should provide assistance in capacity building. Thirdly, since challenges are similar in certain countries, states should learn from one-another.⁴⁰⁵ In this vein, according to article 7 of the Paris Agreement on Adaptation, State Parties are obliged to engage in adaptation planning and implementation of adaptation actions. Parties should also submit and update adaptation communications, possibly as part of their Nationally Determined Contributions (NDCs), identifying priorities and needs, and to strengthen cooperation on adaptation. At the same time, while the Paris Agreement recognises that adaptation is a global challenge, it also maintains that adaptation action should follow a country-driven approach, while also recognising the importance of support for adaptation efforts of developing countries. Some participants of the climate negotiations have proposed a separate ‘adaptation protocol’ even.⁴⁰⁶ Nonetheless, as Bodansky et al.⁴⁰⁷ establish, these provisions do not prescribe a particular course of action for either of the State Parties, and no explicit provisions pertain to climate change induced human mobility.

Another possibility to include climate change induced human mobility under the Paris Agreement is to re-interpret the provisions on loss and damage. Article 8 (1) of the Paris Agreement provides that State Parties “recognize the importance of averting,

⁴⁰³ Bodansky et al (2017) p.327

⁴⁰⁴ European Commission, Climate Action „Adaptation to Climate Change” (Elérhető: https://commission.europa.eu/about-european-commission/departments-and-executive-agencies/climate-action_en 2023. május 19.)

⁴⁰⁵ Bodansky et al p.14

⁴⁰⁶ Biermann & Boas p.78

⁴⁰⁷ Bodansky et al. p.239

minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage”. Additionally, the WIM has been incorporated in Art. 8(2) in the Paris Agreement, providing that the State Parties should enhance understanding, action and support, including through the Warsaw International Mechanism, as appropriate, on a cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change, subject to the guidance of its permanent governing body, the COP.⁴⁰⁸ The main form of this cooperation are the following: (a) Early warning systems; (b) Emergency preparedness; (c) Slow onset events; (d) Events that may involve irreversible and permanent loss and damage; (e) Comprehensive risk assessment and management; (f) Risk insurance facilities, climate risk pooling and other insurance solutions; (g) Non-economic losses; and (h) Resilience of communities, livelihoods and ecosystems.⁴⁰⁹ It must also be noted that article 8 of the Paris Agreement does not involve or provide basis for any liability and compensation under the rules of state responsibility under international law.⁴¹⁰ So this soft-law responsibility of the parties to enhance action on and support for loss and damage could be interpreted widely enough to drive a progressive loss and damage agenda, including various aspects of climate change induced human mobility. However, Siegele warns that the provision on support lacks a direct tie-in to the financial mechanism of the Convention, thus actions would not be eligible for funding under the UNFCCC’s Green Climate Fund.⁴¹¹

Finally, anticipating and managing climate change induced human mobility may also be incorporated under the provisions pertaining to capacity-building. Article 11 of the Paris Agreement provides a legal expectation that developed States should enhance the capacity and ability of developing countries “to take effective climate change action”. In fact, responsibilities of the parties is cooperation and communication of capacity building efforts.⁴¹² However, issues related to the source and the extent of funding for such adaptation mechanisms were left for COP debates. Eventually, the Paris Committee on Capacity-Building was set up at COP21.⁴¹³ Some of the main examples of capacity-building projects and

⁴⁰⁸ UNFCCC Art. 8(3)

⁴⁰⁹ UNFCCC Art. 8(4)

⁴¹⁰ Para 51. of Decision 1/CP.21

⁴¹¹ Siegele p. 229

⁴¹² Crispin d’Auvergne and Matti Numellin: Capacity-building (Article 11). IN: Daniel Klein-Maria Pia Carazo-Meinhard Doelle, Jane Bulmer, Andrew Higham (eds): *The Paris Agreement on Climate Change*, OUP, 2017. pp.277-291 p. 284

⁴¹³ Bodansky et al. p. 15

cooperation are the Global Climate Change Alliance, the Southeast Asia Network of Climate Change Focal Points, and the Vietnam meteorology capacity-building.⁴¹⁴ So far no relocation or any other projects related to climate change induced human mobility received funding.

As demonstrated above article 7 on adaptation and article 8 on loss and damage are separate topics, as requested by developing countries. These two articles do overlap, however. These provisions are complemented by capacity-building provisions, which together could create the perfect architecture for precautionary, preventive measures related to climate change induced human mobility caused by slow-onset events. Regarding rapid-onset consequences of climate change, the UNFCCC recognises the complementary work done by the UN Office of Disaster Risk Reduction, which I will elaborate on in the next section. Overall, the UNFCCC remains what it is; essentially a technical, environmental legal instrument, and social contexts and consequences should be regulated separately, just like international humanitarian law and international disaster response law. The object is climate and its protection, thus its negative object is climate change. The subjects are states, but increasingly other non-state actors, individual stakeholders as well. Interestingly, there is a common but differentiated responsibility among its subjects, basically between developed and developing states. In the first decades, despite the original text of the UNFCCC, the international community focused on mitigation. Since the latest IPCC report, those who are not climate-deniers feel that the battle might have been lost already, and so the international community has switched its focus from mitigation to adaptation.

Since then, the United Nations Climate Change Conference COP27 closed with a breakthrough agreement to provide “loss and damage” funding for vulnerable countries hit hard by climate disasters, totalling more than USD 230 million.⁴¹⁵ Parties also agreed on the institutional arrangements to operationalize the Santiago Network for Loss and Damage, to catalyse technical assistance to developing countries that are particularly vulnerable to the adverse effects of climate change. Deliberations continued on setting a ‘new collective quantified goal on climate finance’ in 2024, taking into account the needs and priorities of developing countries.

The UNFCCC as an international environmental law treaty, is primarily concerned with inter-state relations. Unlike international human rights treaties, where legal obligations

⁴¹⁴ d’Auvergne and Nummellin p.290

⁴¹⁵ <https://unfccc.int/news/cop27-reaches-breakthrough-agreement-on-new-loss-and-damage-fund-for-vulnerable-countries>

placed on the state are owed to the individuals and communities under their jurisdiction. Moreover, initially, the adaptation programmes did not include the social or individual aspects, these were outweighed by economic interests. This purely environmental approach, which was dependent upon the economic interests of the state parties, slowly diluted and thus the concept of climate justice was born.

4.2.INTERNATIONAL HUMAN RIGHTS LAW

International Human Rights Law applies in the anticipation, during and in the aftermath of natural disaster, as well as throughout the experiences of environmental degradation. As Prieur points out, no human rights convention excludes a period of disaster from its scope of temporal application. However, the European Convention on Human Rights permits derogation in time of emergency, and therefore only non-derogable rights must be observed during a public emergency.⁴¹⁶ Nonetheless, the 2006 Convention on the Rights of Persons with Disabilities explicitly declares its application in situations of risk and humanitarian emergency, including natural disasters. In fact, it is also the only convention making such a declaration, and for all other human rights conventions continuous, or uninterrupted application is merely implicit.⁴¹⁷

Environmental disasters as well as environmental degradation, including the adverse effects of climate change, affect human rights and jeopardise the fulfilment and protection of the human rights of the persons of concern. This might seem obvious at first but policy-makers of the related fields must be constantly reminded of the Human Rights Based Approach stipulated by the UN Charter in 1945, when orchestrating comprehensive measures and strategies related to the adverse effects of climate change.

Under international human rights law, it is the state that is the ultimate guarantor of human rights. It is the state that has an international obligation to respect, protect and to fulfil respective human rights. The duty to respect entails a passive state that refrains from a certain conduct, which would have an adverse effect on the enjoyment of a certain human right. Classic examples are the prohibition of torture or extrajudicial killing of individuals. The duty to protect entails a positive duty that requires a state to take action to prevent human

⁴¹⁶ ECHR article 15: "In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law."

⁴¹⁷ Prieur p.4

rights violations. This duty to protect is usually violated through omissions to regulate a certain issue or to enforce a certain law, rather than through actual harmful act. Finally, the duty to fulfill human rights means that for example in particular in terms of economic, social and cultural rights state obligation is to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realisation of the concrete human right. A particular human right may involve a variety of correlative duties for the state.⁴¹⁸

In the following sections, I will assess how these duties on a state have been thusfar interpreted in terms of environmental protection and environmental harm impacting the enjoyment of human rights, in order to apply this logic and to test it against the impacts of climate change.

4.2.1. The right to a healthy environment

Evidently, the assessment of the interrelations between environmental protection and human rights must start with establishing whether there exists a human right to a healthy environment, and so in this section, I will assess various international human rights documents. If there exists such a right under international law, individual legal redress under Human Rights Law may be available to those persons of concern, who had to leave their country of origin.

[A comparison of human rights documents on the Right to a Healthy Environment. Table 9]

UDHR (1948)	-	n/a
ADHR (1948)	-	n/a
ECHR (1950)	-	n/a
European So- cial Charter (1961)	-	n/a
ACHR (1961)	-	n/a

⁴¹⁸ Bodansky et al (2007) p.306

ICCPR (1966)	-	n/a
ICESCR (1966)	art 12	<p>1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.</p> <p>2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:</p> <p>[...] (b) The improvement of all aspects of environmental and industrial hygiene.</p>
ACHPR (1981)	art 24	All peoples shall have the right to a general satisfactory environment favourable to their development.
VDHR (1993)	art 11	The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. The World Conference on Human Rights recognizes that illicit dumping of toxic and dangerous substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone.
EU FR Charter (2000/2009)	art 37	A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.
Arab Charter (2004)	art 38	Every person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment. The States parties shall take the necessary measures commensurate with their resources to guarantee these rights.
ASEAN Dec- laration (2012)	art 28	<p>Every person has the right to an adequate standard of living for himself or herself and his or her family including:</p> <p>a. The right to adequate and affordable food, freedom from hunger and access to safe and nutritious food;</p>

		<ul style="list-style-type: none"> b. The right to clothing; c. The right to adequate and affordable housing; d. The right to medical care and necessary social services; e. The right to safe drinking water and sanitation; f. The right to a safe, clean and sustainable environment.
--	--	---

In line with the evolution and development of International Environmental Law, it is evident that the more recent the human rights document, the more likely it is to include a reference to a healthy environment. The International Covenant on Economic, Social and Cultural right establishes the right to health, both physical and mental health. It is within the realm of this right to health that as a possible means to an objective, the ICESCR mentions the requirement of improving environmental hygiene. Subsequently, it is the African Human Rights Convention that explicitly mentions the requirement and the right to a satisfactory environment for the first time in 1981. We can also see that the World Congress on Human Rights in Vienna in 1993 was indeed necessary, in order to codify, even if in a legally non-binding declaration, the references to sustainable development⁴¹⁹, which was a fairly new concept at the time. In contrast to the African Human Rights Convention's provision, the Vienna Declaration on Human Rights and even the EU Fundamental Rights Charter phrases the right to a healthy environment, as a principle or rather a state objective. Under EU law, it is rather an obligation of individual EU Member States to draft state policies in a way to fulfil and to protect an individual's right to a healthy environment. Rather than creating a justiciable right, it is merely state policy.

In contrast, although the European Convention on Human Rights does not contain the right to a healthy environment explicitly or any implicit reference to it, the European Court of Human Rights brought numerous environment-related (environmentally friendly) decisions by referencing the right to life (art 2.), the right to a private and family life (art 8.) or even the right to property (1st Protocol). Thus, the European Court of Human Rights indirectly protected and fulfilled the right to a healthy environment, which also proves that in certain instances a lack of explicit codification of a human right does not hinder the respect,

⁴¹⁹ The origins of the concept of 'Sustainable Development' were incorporated in the Club of Rome report titled „Limits to Growth” in 1972 (<https://www.clubofrome.org/report/the-limits-to-growth/>) and the term was coined by the World Commission on the Environment and Development, set up by the UN General Assembly, in their 'Our Common Future' report in 1987 (<http://www.un-documents.net/our-common-future.pdf>).

fulfilment and protection of that right. Moreover, the Inter-American Court of Human Rights is also very active in providing Advisory Opinions at the request of states on the relationship between human rights and the environment, even though the American Charter of Human Rights also does not provide any explicit provisions.⁴²⁰ In fact, the Republic of Colombia and the Republic of Chile recently submitted a request for an advisory opinion to the Inter-American Court of Human Rights to clarify the scope of State obligations, in their individual and collective dimension, in order to respond to the climate emergency within the framework of international human rights law, paying special attention to the differentiated impacts of this emergency on individuals from diverse regions and population groups, as well as on nature and on human survival on our planet.⁴²¹

Reverting once more to the environment-climate relationship, the right to a healthy, clean or satisfactory environment would also cover climate protection. Bodansky argues that the difficulty in such a “stand-alone environmental right” is to determine the desirable quality of environment, the level that must be reached in order to determine whether this human right had been violated or not.⁴²² However, with the development of the methods of climate science, in case of climate protection and climate change, it can be determined whether limiting global warming to 2 degrees or 1,5 degrees will suffice, and acceptable and non-acceptable climate impacts may also be distinguished from one other. In fact, that is partly what the IPCC is mandate to do.

Overall, the right to a healthy/clean/satisfactory environment may provide an individual legal remedy under international law for those whose rights were directly affected and may claim compensation once state responsibility is established. However, the violation of the right to a healthy environment does not directly give rise to the right to asylum, in terms of environmentally induced human mobility.

4.2.2. Climate change and human rights violations

While the right to a healthy environment, would implicitly include the right to climate protection, there is another aspect of the climate change and human rights nexus that must be explored. The UN High Commissioner for Human Rights has called climate change the

⁴²⁰ IACtHR. Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23 (hereinafter “OC- 23/17. Environment and Human Rights”)

⁴²¹ Original text of the request available at: https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf

⁴²² Bodansky et al (2017) p. 303

greatest threat to human rights (in general) in the 21st century. Legal practitioners have begun asserting legal claims that climate change is implicated in human rights violations, while there is also an increasing amount of academic research on the implications of climate change on human rights. The Human Rights Council also appointed a special rapporteur on human rights and the environment.⁴²³

Climate change affects all areas of a human life. In particular, affected human rights include the right to life, the rights to adequate food, water and shelter, and the right to the highest attainable health, as well as the right to self-determination. In the *Gabcikovo-Nagymaros* case judgement, Judge Weeramantry declared in a separate opinion that the protection of the environment is the ‘sine qua non’ for numerous human rights, but above all, to the right to life.⁴²⁴ The European Court of Human Rights established in more than a dozen cases that severe environmental pollution, natural disasters and environmental degradation may affect individuals in a way that prevents them from enjoying their homes, that affects their well-being, their private and family life.⁴²⁵ As evidenced in the previous section, the fact that the European Convention on Human Rights does not explicitly incorporate a right to a healthy environment or anything of its equivalent, the ECtHR always clarifies in its judgements that environmental harm can only constitute a human rights violation if it impacts a person’s protected right. General deterioration of the environment is insufficient to establish a violation of human right, however, it is not impossible. This indirect causation leaves room for hesitation but also consistently links environmental harm to human rights violations. Moreover, the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights have heard cases related to environmental harms as well. Thus-far there was only one case on climate change, where the Inuit petitioners claimed before the Inter-American Court of Human Rights that the thinning of sea ice, changes in snowfall, melting of permafrost and changes in animal movements caused by climate change resulted in the violations of their right to property, health, life and the means of subsistence, residence, movement, the inviolability of their home, as well as their cultural rights. Unfortunately, the Commission declared the case inadmissible without providing adequate reasoning.⁴²⁶ In addition, as an example of state practice, the Federal High Court of Nigeria held that the practice of gas flaring in the Niger Delta, which at the time contributed more to

⁴²³ Bodansky et al p.297

⁴²⁴ *Gabcikovo-Nagymaros Project (Hungary/Slovakia) (Judgment) [1997] IVJ Rep 7, Separate Opinion of Vice-President Weeramantry, pp. 88-91.*

⁴²⁵ Bodansky et al p.302

⁴²⁶ Bodansky et al (2017) p.302

climate change than all other sources in Sub-Saharan Africa, violated the constitutional rights to life and dignity of the people.⁴²⁷

In conclusion, it is widely accepted that environmental harm could only be considered a direct human right violation, provided that the applicable jurisdiction recognises the right to a clean and/or healthy environment. Therefore, without a well-defined right to a healthy/satisfactory environment, it must be emphasized that climate change is not a human rights violation in itself. At the moment there is no human rights court or human rights commission with a jurisdiction and a mandate over the right to a healthy environment, and especially not a right to an unchanged climate. Even if we were to consider human mobility as a consequence of the violation of the right to a healthy environment, including climate protection, primarily the legal obligation to protect those displaced lies with their home states. Unless they become stateless, or move across an internationally recognised state border, the international community may not intervene. However, guidelines on how to deal with such situations and vulnerable persons, and support is required, which I will elaborate on in the next chapter.

4.2.3. Climate Justice

The assessment of the right to a healthy environment and the climate change and human rights nexus, leads us to the discussion of the newly emerging concept of Climate Justice. It must be mentioned that well in to the Cold War era, in the direct aftermath of decolonisation and during the nation-building processes of whole continents, as Ehresman and Stevis⁴²⁸ point out as well, the notion of equity and justice were not yet on the agenda. However, environmental justice movements did gain momentum in the beginning of the 21st century. Already the outputs of the Earth Summit expressly included certain formal provisions on international environmental equity.

In 1972⁴²⁹, the UN convened the first ever UN Conference on the Human Environment, which issued the Stockholm Declaration on the Human Environment establishing the principles and guidelines of international environmental law, as explained in the previous section. At the same time, the Club of Rome published its report titled *The Limits to Growth*,

⁴²⁷ Bodansky et al (2017) p.303

⁴²⁸ Timothy Ehresman, Dimitris Stevis: International environmental and ecological justice. In: Gabriela Küting, and Kyle Herman: *Global Environmental Politics*, Routledge, 2018 p.105

⁴²⁹ By the 1970s, the international community started realising that their economies were increasingly dependent on natural resources that were depleting...

which concluded that natural resources are not at humanity's unlimited and infinite disposal and thus the natural environment may be incapable of sustaining a healthy and satisfactory human existence. In 1987, the World Commission on Environment and Development was set up, which issued a report titled *Our Common Future*, introducing and defining the term „sustainable development“. In 1992, the so-called Earth Summit, the UN Conference on Environment and Development was held.

The first Climate Justice Summit was organised to coincide with COP 6 at The Hague in 2000. It was put together by the Rising Tide network as a radical alternative to the official talks.⁴³⁰ Fake conference passes enabled activists to get in and disrupt the COP talks. Someone even put a cream pie in the face of the lead US negotiator Frank Loy during a press conference, and activists got on the roof beams and showered the delegates with fake carbon credits. All the protestors' activities were published in [a fanzine](#) that was distributed after the event. Not only was the attention of the conference participants raised but this sparked a movement among legal scholars to initiate the drafting of a separate convention, or draft articles, as well as guidelines for definitions, to deal with climate change induced human mobility, amidst scepticism. This movement was spear headed by Dacherty & Gannini of Harvard University, referencing their article published at the time titled “Confronting the Rising Tide”.

Subsequently, the third UN Conference on the Environment and Development, and the World Summit on Sustainable Development, held in Johannesburg, South Africa, in 2002 was set out to launch partnerships for sustainable development. Such partnerships were defined as voluntary multi-stakeholder initiatives to promote the implementation of Agenda 21, Rio+5 and the Johannesburg Plan of Implementation. Named after the location of the preparatory committee meeting held leading up to the World Summit on Sustainable Development, the Bali Guidelines summarized basic guidelines to build thriving public/private partnerships. At the same time, an international coalition of groups gathered in Johannesburg for the Earth Summit released a set of principles aimed at "putting a human face" on climate change. The Bali Principles of Climate Justice redefined climate change from a human rights and environmental justice perspective. The principles were developed by the coalition - which included CorpWatch, Third World Network, Oil Watch, the Indigenous Environmental Network, Greenpeace International among others – to be adopted at the final preparatory negotiations for the Earth Summit in Bali in June 2002. The objective was to build an

⁴³⁰ <https://www.theguardian.com/global-development-professionals-network/2014/apr/16/climate-change-justice-summit>

international movement of all peoples for Climate Justice based on the following core principles.⁴³¹

[The Bali Principles of Climate Justice Table 10]

1. Affirming the sacredness of Mother Earth, ecological unity and the interdependence of all species, Climate Justice insists that communities have the right to be free from climate change, its related impacts and other forms of ecological destruction.
2. Climate Justice affirms the need to reduce with an aim to eliminate the production of greenhouse gases and associated local pollutants.
3. Climate Justice affirms the rights of indigenous peoples and affected communities to represent and speak for themselves.
4. Climate Justice affirms that governments are responsible for addressing climate change in a manner that is both democratically accountable to their people and in accordance with the principle of common but differentiated responsibilities.
5. Climate Justice demands that communities, particularly affected communities play a leading role in national and international processes to address climate change.
6. Climate Justice opposes the role of transnational corporations in shaping unsustainable production and consumption patterns and lifestyles, as well as their role in unduly influencing national and international decision-making.
7. Climate Justice calls for the recognition of a principle of ecological debt that industrialized governments and transnational corporations owe the rest of the world as a result of their appropriation of the planet's capacity to absorb greenhouse gases.
8. Affirming the principle of ecological debt, Climate Justice demands that fossil fuel and extractive industries be held strictly liable for all past and current life-cycle impacts relating to the production of greenhouse gases and associated local pollutants.
9. Affirming the principle of Ecological debt, Climate Justice protects the rights of victims of climate change and associated injustices to receive full compensation, restoration, and reparation for loss of land, livelihood and other damages.
10. Climate Justice calls for a moratorium on all new fossil fuel exploration and exploitation; a moratorium on the construction of new nuclear power plants; the phase out of the use of nuclear power world wide; and a moratorium on the construction of large hydro schemes.

⁴³¹ <https://www.corpwatch.org/article/bali-principles-climate-justice>

11. Climate Justice calls for clean, renewable, locally controlled and low-impact energy resources in the interest of a sustainable planet for all living things.
12. Climate Justice affirms the right of all people, including the poor, women, rural and indigenous peoples, to have access to affordable and sustainable energy.
13. Climate Justice affirms that any market-based or technological solution to climate change, such as carbon-trading and carbon sequestration, should be subject to principles of democratic accountability, ecological sustainability and social justice.
14. Climate Justice affirms the right of all workers employed in extractive, fossil fuel and other greenhouse-gas producing industries to a safe and healthy work environment without being forced to choose between an unsafe livelihood based on unsustainable production and unemployment.
15. Climate Justice affirms the need for solutions to climate change that do not externalize costs to the environment and communities, and are in line with the principles of a just transition.
16. Climate Justice is committed to preventing the extinction of cultures and biodiversity due to climate change and its associated impacts.
17. Climate Justice affirms the need for socio-economic models that safeguard the fundamental rights to clean air, land, water, food and healthy ecosystems.
18. Climate Justice affirms the rights of communities dependent on natural resources for their livelihood and cultures to own and manage the same in a sustainable manner, and is opposed to the commodification of nature and its resources.
19. Climate Justice demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias.
20. Climate Justice recognizes the right to self-determination of Indigenous Peoples, and their right to control their lands, including sub-surface land, territories and resources and the right to the protection against any action or conduct that may result in the destruction or degradation of their territories and cultural way of life.
21. Climate Justice affirms the right of indigenous peoples and local communities to participate effectively at every level of decision-making, including needs assessment, planning, implementation, enforcement and evaluation, the strict enforcement of principles of prior informed consent, and the right to say "No."
22. Climate Justice affirms the need for solutions that address women's rights.

23. Climate Justice affirms the right of youth as equal partners in the movement to address climate change and its associated impacts.
24. Climate Justice opposes military action, occupation, repression and exploitation of lands, water, oceans, peoples and cultures, and other life forms, especially as it relates to the fossil fuel industry's role in this respect.
25. Climate Justice calls for the education of present and future generations, emphasizes climate, energy, social and environmental issues, while basing itself on real-life experiences and an appreciation of diverse cultural perspectives.
26. Climate Justice requires that we, as individuals and communities, make personal and consumer choices to consume as little of Mother Earth's resources, conserve our need for energy; and make the conscious decision to challenge and reprioritize our lifestyles, re-thinking our ethics with relation to the environment and the Mother Earth; while utilizing clean, renewable, low-impact energy; and ensuring the health of the natural world for present and future generations.
27. Climate Justice affirms the rights of unborn generations to natural resources, a stable climate and a healthy planet.”

Afterwards, as mentioned above, the fourth UN Conference, titled Rio+20 held in Rio de Janeiro again, aiming to bring about a shift to a green economy, failed to produce any significant outcomes altogether.⁴³² 2015 was a significant milestone on two occasions for the Climate Justice movement. The 2030 Agenda for Sustainable Development was adopted by all United Nations Member States in 2015, which has provided a shared blueprint for peace and prosperity for people and the planet. The 17 Sustainable Development Goals (SDGs) are an urgent call for action by all countries - developed and developing - in a global partnership. Among ending poverty and other deprivations, strategies that improve health and education, reduce inequality, and spur economic growth – all while tackling climate change and working to preserve our oceans and forests.⁴³³ Although intended to serve as a concrete action plan to be delivered by all states, the Sustainable Development Goals today serve rather as a new framework of mild social reform and the leading paradigm for the 21st century. Meanwhile in Paris, replacing the Kyoto Agreement a new convention was signed

⁴³² Ehresman and Stevis p.106

⁴³³ <https://sdgs.un.org/goals>

under the UNFCCC. While the body of the Paris Agreement does not explicitly promote the issue of environmental justice and fairness among states, however, COP plenaries and side events have started to focus on indigenous people and states in climate change hotspots. It must also be mentioned that 2015 was also the year when the Sendai Framework for Disaster Risk Reduction was adopted.

Citizens' movements eventually find a way into policy making. In 2020, the European Union's European Commission launched the European Green Deal, with the aim to transform the EU into a modern, resource-efficient and competitive economy, ensuring no net emissions of greenhouse gases by 2050, economic growth decoupled from resource use, and a just transition. For the latter in particular, the Just Transition Mechanism was set up to ensure that the transition towards a climate-neutral economy happens in a fair way, leaving no one behind. It provides targeted support to help mobilise around €55 billion over the period 2021-2027 in the most affected regions, to alleviate the socio-economic impact of the transition.⁴³⁴ Finally, the IPCC Working Group II 6th Assessment report adopted the approach to take account of climate-related hazards, the exposure and vulnerability of affected human and ecological system and the requirements of "justice" are referenced multiple times.⁴³⁵

Concerning the validity of the climate justice argument, or movement, some narratives focus on historical responsibility, while others focus on duties owed to future generations, and again others focus on a fair division of burdens based on current capabilities, while some focus on the egalitarian principle claim to have equal right to the atmospheric space.⁴³⁶ Such perspectives arise when the international community tries to resolve how greenhouse gas emissions should be reduced, and when states claim that small island states have contributed the least to causing climate change and yet face some of the most severe effects, namely disappearing. It is beyond debate that climate change effects countries disproportionately. The World Bank estimates that the combined needs of developing countries for mitigation and adaptation will be approximately 275 billion dollars per year by 2030.⁴³⁷ Equity claims that the primary burden of reducing emissions should be borne by developed

⁴³⁴ https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/finance-and-green-deal/just-transition-mechanism_en

⁴³⁵ https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf

⁴³⁶ Bodansky et al. p.6

⁴³⁷ Bodansky et al. p.9

countries but from an environmental standpoint, reducing developing countries' emission is also crucial. To this end, the clean development mechanism was set up.

Although recognising that climate change is not a traditional context for transitional justice, Thorp argues that in fact transitional justice concepts serve as a legal foundation for climate justice arguments. In 2004, a Secretary General report to the UN Security Council defined transitional justice as the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.⁴³⁸ To better explain the idea, I have summarised the concepts of environmental, ecological and climate justice in the table below.

Table 11 on the concepts of environmental, ecological and climate justice⁴³⁹

	Injustice	Justice
Environmental Justice ⁴⁴⁰	Maldistribution of environmental burdens and benefits and decision-making authority, due to capitalist economic globalism and western/eurocentric global governance	Fair allocation or equitable distribution of environmental benefits and burdens, within the rules of dominant political economy, through reforms or fundamental changes in political economy
Ecological Justice	Privileging human needs and wants with no, or insufficient, regard for the needs of non-human nature	Minimisation or elimination of harms, and equitable distribution of harms and benefits amongst humans and nature
Climate Justice	Maldistribution of burdens (and benefits?) of climate change, as well as decision-making authority	Agency and recognition of non-state actors, minimisation or elimination of harms, equitable distribution of resources for climate change mitigation and adaptation.

⁴³⁸ Thorp p.77

⁴³⁹ Based on the environmental and ecological justice/injustice concepts of Ehresman and Stevis, Ehresman and Stevis p.109

⁴⁴⁰ Ehresman and Stevis differentiate three branched of environmental justice: status quo, reformist and transformational environmental justice.

While it is hard to argue with the legitimacy of the above described concepts, as Bodansky et al. point out, using certain, widely accepted metrics to measure environmental effectiveness and economic efficiency, measuring and demonstrating equity and climate justice authentically poses a challenge.⁴⁴¹

Moreover, without going into too much detail on the fairly recent phenomenon of climate litigation the following pioneering cases must be mentioned. An Inuit group filed a petition before the Inter-American Commission on Human Rights in 2005 alleging that the US had violated their human rights, including the right to culture, life, health and shelter by failing to reduce emissions. Then, a number of island states led by Palau proposed in 2012, that the General Assembly request an advisory opinion from the International Court of Justice regarding the responsibilities of States under international law to ensure that activities carried out under their jurisdiction or control that emit greenhouse gases do not damage other states. In a negligence case brought by a Dutch Foundation and hundreds of individuals, a Dutch Court found in June 2015, that the government's 20% emissions reduction target breached its duty of care to take mitigation measures, and ordered the government to adopt at least 25% reduction target. In domestic courts, the Lahore High Court in Pakistan, in 2015 found that the government had made no progress in implementing its National Climate Policy and framework, and held that this failure violated citizens' human rights and ordered the establishment of a commission to oversee implementation of the governments adaptation plan.⁴⁴²

While climate justice may be perceived as a social movement, combined with international human rights law, it serves as the motivation and the legal objective in the commencement of climate litigation, enforcing climate protection, climate change mitigation and adaptation to the effects of climate change through well-established frameworks of human rights and environmental litigation. Standing as an injured party may be established for locals as well as those displaced by environmental change or climate change in particular.

4.3. INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL DISASTER RELIEF LAW

As demonstrated in the previous section, International Environmental Law is concerned mostly with human-induced disasters, and generally agrees with the dichotomy of human and natural disasters. Essentially, the function of International Environmental Law is to

⁴⁴¹ Bodansky et al. p.5

⁴⁴² Bodansky et al (2017) p.285

reduce human impacts on the environment that could lead to environmental disasters.⁴⁴³ International Environmental Law also emphasizes the importance of ensuring that measures adopted in anticipation, during and in the aftermath of a natural disaster do not have undue impacts on the environment, especially with regards to geoengineering in the realm of climate protection.⁴⁴⁴

Similarly, International Humanitarian Law and International Disaster Response Law distinguishes armed conflict, peacetime disasters and complex emergencies. Currently, we are witnessing the transformation of disasters as overwhelming processes causing major losses for the affected communities, from force majeure attributed to God or Mother Nature to anthropogenic.⁴⁴⁵ Stephens claims that we are experiencing the collapse of the human/natural disaster distinction as there is overwhelming evidence that human activities are placing unprecedented stresses on the global environment, pushing the planet's environmental systems beyond its planetary boundaries.⁴⁴⁶ In any case, despite the origin or the causes of the environmental disaster, safeguarding environmental systems and services for maintaining and building resilience against such environmental disaster is the key.⁴⁴⁷ Simply put, when considering events during the Anthropocene, strictly distinguishing natural and human induced environmental changes, whether abrupt or gradual, is unnecessary. This approach directly entails, that it is also unnecessary to distinguish natural and anthropogenic climate change. In the end, the climate is changing, and humanity must do everything it can to mitigate it and adapt to it.

While the humanitarian consequences of armed conflicts are governed by international humanitarian law, which is a well-established body of conventional and customary law, (natural) environmental disasters are governed by the emerging field of international disaster response law, as explained earlier. However, when an armed conflict overlaps with an environmental disaster, referred to as “complex emergencies”⁴⁴⁸, the application of the relevant body of law is not straight forward. Examples of such complex emergencies are the 2005 tsunami in Sri Lanka and Indonesia, the major floods in Pakistan between 2010 and

⁴⁴³ Stephens p.158

⁴⁴⁴ Stephens p.159

⁴⁴⁵ Kristian Cedervall Lauta: Human rights and natural disasters In: Susan C Breau – Katja LH Samuel (eds): Research Handbook on Disasters and International Law, Elgar Publishing, 2016, p. 93

⁴⁴⁶ Anthropocene is a geological epoch dating from the significant impact of human activity on environmental systems of our planet. Stephens p.169

⁴⁴⁷ Stephens p.169

⁴⁴⁸ Tilma Rodenhauer and Gilles Giacca: The international humanitarian law framework for humanitarian relief during armed conflicts and complex emergencies IN: Susan C Breau – Katja LH Samuel (eds): Research Handbook on Disasters and International Law, Elgar Publishing, 2016. p. 147

2012, or severe drought in Somalia in 2011. As discussed in the previous chapter, disasters and conflicts may interrelate, and in all cases, consequences of disasters are aggravated by the existence of armed conflict.

In situations of armed conflict, including complex emergencies, the principal international legal framework that applies in the affected territory to humanitarian relief is international humanitarian law. While the primary purpose of IHL is to protect persons who do not or no longer participate in hostilities, from the armed conflicts and its impacts, Rodenhauer and Giacca argue that in fact non-of the following provisions governing humanitarian relief in times of armed conflict is restricted to humanitarian needs arising exclusively from armed conflicts:

Table 13

Fourth Geneva Convention Art 59	„If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.”
Additional Protocol I Art 70 (1)	„ <u>If the civilian population of any territory</u> under the control of a Party to the conflict, other than occupied territory, <u>is not adequately provided with the supplies</u> mentioned in Article 69, relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the agreement of the Parties concerned in such relief actions. Offers of such relief shall not be regarded as interference in the armed conflict or as unfriendly acts. In the distribution of relief consignments, priority shall be given to those persons, such as children, expectant mothers, maternity cases and nursing mothers, who, under the Fourth Convention or under this Protocol, are to be accorded privileged treatment or special protection.”
Additional Protocol II Art 18 (2)	<u>If the civilian population is suffering undue hardship owing to a lack of the supplies</u> essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any

	adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned.
--	---

It is thus the need of the civilian population in times of armed conflict that is decisive, irrespective of what the sources of those needs are, whether an armed conflict or an environmental disaster.⁴⁴⁹ In principle IHL applies in the entire territory of the conflicting State Parties, meaning the whole territory under the control of a conflicting State Party, whether or not actual combat takes place there. However, sufficient nexus between a certain act or situation and the armed conflict is required for the applicability of IHL. This would mean that if a disaster occurs far away and without any link to an armed conflict, relief provisions incorporated in IHL are not applicable. Therefore the determination of the applicable law must be done on a case by case basis.⁴⁵⁰ In terms of the recipients, the civilian population as a whole is entitled to benefit from relief. Specific provisions regulating the relief intended for specific categories of vulnerable persons, such as detainees, internees, prisoners of war, wounded and sick persons, populations of occupied territories, women, and children also apply. Slow onset and rapid onset environmental disasters linked to armed conflict puts the requirement on conflicting states to provide protection, and to allow relief assistance by relief organisation on their territory.

IHL is not the only body of international law that applies, as for example International Human Rights Law also applies, offering protection to displaced persons as discussed earlier. Moreover, in this section I will analyse an evolving branch of international law, the International Disaster Response Law (IDRL). IDRL pertains to crisis management in case of disasters, including environmental disasters.

International Humanitarian Law and International Disaster Response Law are siblings. Many cite the battle of Solferino as the prompt for Henry Dunant to call for and fund the establishment of the International Committee of the Red Cross, which also brought with it the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, however the first example of trans-border relief dates back to the 1755 Lisbon earthquake response, where almost 50,000 people have died from an earthquake inducing a tsunami on All Saints' Day. A century later Dunant appealed for action on behalf of those impacted by natural disasters as well, and a resolution of the ICRC thus urged

⁴⁴⁹ Rodenhauer and Giacca p.147

⁴⁵⁰ According to the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) this applies to both international armed conflicts and non-international armed conflicts, as well as in the case of extraterritorial non-international armed conflicts. Rodenhauer and Giacca p.148

Contracting State Parties to expand the 1864 Convention to “peacetime disaster victims” but this expansion was not implemented.⁴⁵¹ A missed opportunity, this oversimplified dichotomy of wartime and peacetime contexts thus continues to this day. In contrast to the object of International Humanitarian law, natural disasters rarely necessitated international involvement to the same extent and failed to deliver the same sense of urgency among governments, especially the need to develop a suitable legal framework. While States focused on political tension and human lives lost due to armed conflict leading up to and during World War I, in the meantime, numerous other types of disasters struck the world: the 1906 San Francisco and 1908 Messina earthquakes, the 1918 Spanish Flu pandemic, and the 1921 Russian Famine. Based on the (bad) experiences of the Messina earthquake, the inefficacy of the relief work, the Italian Red Cross at the time, turned to the International League of Red Cross Societies with a proposal titled “Necessity for an International Organisation for the Immediate Relief of Populations Afflicted by Sudden Calamity”. The 10th International Conference of the Red Cross in 1921 considered the proposal on responding to peacetime crises, and subsequently a resolution was passed to draft the counterpart of the 1864 Geneva Convention. A year later, the issue was passed on to the newly established League of Nations. Negotiations proved fruitful, with the Convention and the Statute Establishing an International Relief Union (IRU) adopted in 1927, entering into force in 1932. This agreement was the first multilateral, comprehensive treaty having entered into force pertaining to natural disasters. Unfortunately, the IRU eventually only provided assistance during two natural disasters in the 1930s and was formally dissolved in 1967.⁴⁵²

During World War II and in its aftermath the attention of the members of the international community was diverted from natural disasters, and aid work was left to the ICRC and some charity organisations. Their operations included field assistance as well as regulatory framework proposals. The 1969 Principles and Rules of Red Cross Disaster Relief, which were amended by the 1977 Measures to Expedite International Relief, approved by the ICRC, the UN Economic and Social Council and the UNGA.⁴⁵³ It was the 1963 Skopje earthquake and some other disasters around the same period that UN Member States reinforced a call for a greater intergovernmental issue. Thus, the UN General Assembly passed

⁴⁵¹ Kirstin Nakjavani Bookmiller: Closing „the yawning gap”? International disaster response law at fifteen IN: Susan C Breau – Katja LH Samuel (eds): Research Handbook on Disasters and International Law, Elgar Publishing, 2016, p. 46

⁴⁵² Nakjavani Bookmiller p. 51

⁴⁵³ Bearing in mind its position, the ICRC also adopted the 1994 Code of Conduct for the International Red Cross and Red Crescent Movement and Non-governmental Organisations in Disaster Relief. Nakjavani Bookmiller p.55

Resolution A/RES/2034 on the Assistance in Cases of Natural Disaster. By 1971, the UN GA set up the UN Disaster Relief Office (UNDRO) by Resolution 2816 (XXVI) on Assistance in Cases of Natural Disaster and other disaster situations. However, due to unclear mandate definitions, inadequate funding and lack of expertise, UNDRO participated significantly in 10% of disasters between 1976 and 1980. Thus with UN General Assembly Resolution 46/182 on Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations, the UN dedicated the 1990s as the "International Decade for Natural Disaster Reduction", considered drafting an international convention on disaster relief, and established the Department of Humanitarian Affairs (or as now called the Office for the Coordination of Humanitarian Affairs – OCHA), the position of the Emergency Relief Coordinator, the Inter-Agency Standing Committee, the Central Emergency Response Fund and the Consolidated Appeals Process.⁴⁵⁴ Nevertheless, international cooperation remained ad hoc and mostly charity based. In the early 2000s, the UNDP reported that 75% of the world's population live in areas affected at least once by earthquake, tropical cyclone, flood or drought between 1980 and 2000. By 2000, human displacement due to peacetime disasters surpassed those caused by conflict, and while reports of deaths had actually dropped between the 1970s to the 1990s, documented numbers of persons of concern jumped from 700 million to 2 billion.⁴⁵⁵ Consequently, the UN General Assembly adopts the International Strategy for Disaster Reduction in 1999 and also established the UN Office for Disaster Risk Reduction with a mandate to serve as the focal point within the UN for the coordination of disaster reduction and to ensure synergies among states and humanitarian organisations.⁴⁵⁶

It must also be noted that in the field of international disaster relief assistance, bilateralism prevailed over multilateralism. In 2003, the IFRC uncovered 300 relevant treaties and resolutions, two of which were global but also sector-specific: (i) the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (1986), and (ii) the 1998 Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations. Only the latter specifically addressed natural disaster relief.⁴⁵⁷ While the lack of genuine government engagement at the time hindered the regulatory framework on international disaster relief, through trainings, local and national field assistance, proposing guidelines and model acts, the IFRC gained high-level recognition, amounting to the establishment of the International Search and Rescue Advisory Group

⁴⁵⁴ Nakjavani Bookmiller p. 53

⁴⁵⁵ Nakjavani Bookmiller p.52

⁴⁵⁶ Breau p.75

⁴⁵⁷ Nakjavani Bookmiller p.57

(INSARAG).⁴⁵⁸ Following the UN's International Strategy for Disaster Risk Reduction, in 2005 the Hyogo Framework for Action 2005-2015: Building resilience of nations and communities to disasters, already started to emphasize disasters rather than conflicts.⁴⁵⁹ In 2007, at the 30th International Conference of the Red Cross and Red Crescent, the State Parties to the Geneva Conventions and the components of the IFRC adopted the Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance (the IDRL Guidelines).⁴⁶⁰ In 2011, based on the IDRL Guidelines, the IFRC issues the Model Act for the Facilitation and Regulation of international Disaster Relief and Initial Recovery Assistance which intends to assist states to strengthen their legal preparedness for international disaster cooperation. The same year OCHA and the IFRC signed a Memorandum of Understanding formalizing cooperation and promotion of IDRL.⁴⁶¹ The peak of this formalisation process was in 2014, when the International Law Commission adopted the Draft Articles on Protection of Persons in the Event of Disasters (ILC Draft Articles).⁴⁶²

Initially, the IRU's mandate applied to any disaster that was due to force majeure or Acts of God. At the end of its negotiations, the dichotomy between armed conflict and natural disasters were maintained, excluding interstate and intrastate conflicts such as civil wars, revolutions, and other political turmoil.⁴⁶³ The ILC Draft Articles defines disaster as a „calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society”. As of the Hyogo Framework, integration of disaster risk considerations into sustainable development policies with special emphasis on disaster prevention, mitigation, preparedness and vulnerability reduction was emphasized. This contains two levels of responsibility: primary state responsibility and international responsibility to assist developing states.⁴⁶⁴

Primarily, it is the states that are responsible for preventing, responding to and rebuilding after a natural or man-made disaster that occurs on their territories. The IRU Convention held that aid would be necessitated if the event exceeds the limits of the powers and

⁴⁵⁸ The INSARAG is a global network of urban search and rescue personnel providing specialised assistance during disasters, and has been working towards a common legal framework to address coordination, professional standards and border entry challenges. Nakjavani Bookmiller p.59

⁴⁵⁹ Breau p.75

⁴⁶⁰ IFRC: Introduction to the Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance, IFRC, Geneva, 2017 p. 3 https://disasterlaw.ifrc.org/sites/default/files/media/disaster_law/2020-09/1205600-IDRL-Guidelines-EN-LR.pdf

⁴⁶¹ Nakjavani Bookmiller p.61

⁴⁶² Stephens p. 154

⁴⁶³ Nakjavani Bookmiller p.50

⁴⁶⁴ Breau p.75

resources of the stricken people. This is maintained currently by the UN General Assembly Resolution 46/182 on Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations.⁴⁶⁵ Under International Humanitarian Law, slow onset and rapid onset environmental disasters linked to armed conflict puts the requirement on conflicting states to provide protection, and to allow relief assistance by relief organisation on their territory. To establish from a legal philosophy perspective, Breau recalls that the theories on sovereignty as a responsibility date back to John Lockes's theories.⁴⁶⁶ Similarly, Deng maintains that the essence of state sovereignty is the life sustaining standards for its citizens, rather than the control of its subjects. Moreover, Deng extended this argument over state borders, and claimed that these principles impose on the international community a correlative responsibility for their enforcement.⁴⁶⁷ Pursuing this chain of thoughts, Breau recalls that Lilich's proposed three aspects of international responsibility. Firstly, that the single and core purpose of any legal system is to ensure humanity. Secondly, the international system since the peace of Westphalia had not been fulfilling its primary function, that is the protection and development of humans. And thirdly, the proposed new world order should maximise benefits not for states but for individuals, the components of a state. These three aspects serve as a basis for the principle of responsibility to protect.⁴⁶⁸ The International Commission on Intervention and State Sovereignty report also established three elements of responsibility: (i) that state authorities are responsible for protecting the lives, safety and welfare of their citizens; (ii) that national political authorities are not only responsible to their citizens domestically but to the international community through the UN as well, and (iii) that state agents are accountable for their acts of commission and omission both internally and externally.⁴⁶⁹ This also means that without state consent, humanitarian actors cannot provide relief to the affected population.⁴⁷⁰ Although a sovereign state has the responsibility to protect their own citizens from avoidable catastrophe, such as mass murder or starvation, when they are unwilling or unable to do so, that responsibility must be borne by the members of the international community. So the international community bears a secondary responsibility. Although initially not conceived or designed to address situations related to environmental degradation or environmental disasters, including the impacts of climate change,

⁴⁶⁵ Nakjavani Bookmiller p.50

⁴⁶⁶ Breau p.71

⁴⁶⁷ FM Deng et al. Sovereignty as Responsibility: Conflict management in Africa, The Brookings Institute, 1996. p.6

⁴⁶⁸ Breau p.72

⁴⁶⁹ ICISS p.13

⁴⁷⁰ Nakjavani Bookmiller p.50

relevant scholars of the field of IDRL claim that the doctrine of the responsibility to protect can be extended to the environmental context as well.⁴⁷¹

According to the International Commission on Intervention and State Sovereignty, the cycles of disaster are divided into three stages in terms of disaster management and the responsibility for the states at each stage entails: (i) disaster risk and resilience, (ii) disaster response, and (iii) recovery from and reconstruction after the event. These stages entail (i) the responsibility to prevent, (ii) the responsibility to respond, and (iii) the responsibility to rebuild.⁴⁷² The responsibility to prevent means to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk, or in other words risk mitigation. Failure at this stage can turn an otherwise manageable event more serious.⁴⁷³ As Stephens notes, International Environmental law also reflects some of the features of International Disaster Response Law in terms of the disaster response cycle, such as “mitigation, emergency response, insurance/liability compensation and rebuilding”.⁴⁷⁴ This especially makes sense if we consider the initial definition provided by this dissertation in terms of environmental disasters. These stages provide various points of intervention for the international community as a whole, to fulfil their secondary responsibility to protect the affected populations from environmental disasters. These points of intervention can also be directly implemented into international climate change law.

All in all, in case of a collision between the ILC Draft Articles and International Humanitarian Law according to the ILC, IHL offers more protection and is more specific. First, the ILC Draft Articles restricts humanitarian relief assistance to states, the UN and intergovernmental organisations, while the role of non-governmental organisations in humanitarian assistance is well-established under IHL. Second, IDRL provides that the consent of an affected state to international humanitarian assistance cannot be arbitrarily withheld but provides no obligation to grant access. Thirdly, under IDL the direction, control, coordination and supervision of relief assistance remains with the affected states and even to terminate relief operations unilaterally, irrespective of the needs of the population.⁴⁷⁵ This does not mean the exclusive application of IHL, and IDRL should be applied in situations where IHL

⁴⁷¹ Bodansky et al p.321

⁴⁷² Breau p. 70

⁴⁷³ Breau p.74

⁴⁷⁴ Stephens p.153

⁴⁷⁵ Rodenhauser and Giacca p. 150

does not apply or where IHL leaves a gap in the protection of persons of concern, such as disaster preparedness.⁴⁷⁶ IHL remains *lex specialis* in complex emergencies.

IDRL also regulates certain instances of displacement, evacuation and relocation. As such, disaster displacement under IDRL involves (i) disaster risk reduction and climate change adaptation that contribute to the prevention of displacement, (ii) humanitarian action to address the protection and assistance needs of disaster-displaced persons, and (iii) migration and refugee policy when disaster-affected persons move across borders.⁴⁷⁷ Therefore we can conclude that the management of environmental disasters, including the rapid onset effects of climate change are governed by IDRL and IHL, and therefore some form of protection is available for the affected populations. However, this leaves those persons affected by gradual environmental change, and in particular, the slow onset effects of climate change without effective protection, unless their home states provide such protection. Consequently, those persons who are voluntarily or involuntarily immobile due to the effects of climate change, as well as those persons who are induced to move due to environmental changes, whether gradual or rapid, include the slow and rapid onset effects of climate change are without protection under International Disaster Relief Law and International Humanitarian Law. This prompts the need for regulating those instances that are not covered by these legal regimes under international law, which may be done separately, or with a holistic approach. Additionally, once the political will arises to regulate such circumstances under international law, and to provide international protection to those affected, IDRL and IHL provide either the formal legal framework to be extended, or the substantial legal material to be transposed to another international legal framework on environmentally, or more specifically, climate change induced human mobility.

4.4.STATELESSNESS

Finally, another legal framework that has a potential application to cases of climate change induced human mobility, in particular, is the international law concerning statelessness.

Due to the estimated sea-level rise, according to the IPCC, there is a real chance that certain small island states will become completely submerged. At present, the countries most at risk of completely drowning are Kiribati, the Maldives, the Marshall Islands and

⁴⁷⁶ Rodenhauer and Giacca p. 150

⁴⁷⁷ Walter Kalin and Hannah Entwisle Chapuisat: Displacement in the context of disasters and adverse effects of climate change IN: Susan C Breau – Katja LH Samuel (eds): Research Handbook on Disasters and International Law, Elgar Publishing, 2016 p.361

Tuvalu.⁴⁷⁸ As dystopic as it is, this is not a utopia but indeed an issue that must be addressed by international law as well. The phenomenon of these “sinking states” pose a new challenge for the international community. Traditionally the cessation of a state was understood as the loss of independent existence, a fundamental change in the political entity.⁴⁷⁹ More often than not, a state ceased to exist and there was a legal succession. This form of state succession meant that the population and the territory remained essentially constant. Under customary international law, the four conditions of statehood are: (i) permanent/settled population, (ii) defined territory, which is a natural part of the Earth’s surface (land), (iii) a sovereign government, and (iv) the capacity to enter into interstate relations. Regarding the fundamental change in the political entity, these conditions were still fulfilled. The mainstream approach to statehood claims that a state is born at the time of its declaration of statehood, and maintains that the recognition of statehood by other states is irrelevant. However, in the case of endangered states, perhaps the fact that states continue to recognise a state, without fulfilling other conditions of statehood, could support their fight for state survival.

At first, due to the adverse effects of climate change, certain states will become uninhabited, as inhabitants will move to safer locations. This would mean that a state would lose all of its population on its territory, provided that there needs to be a population on the defined state territory. The question of whether a state ceases to exist if and when its entire population moves out of its territory, has not yet been answered legally. However, at this point in time, scholars are no longer concerned with such a massive and permanent form of international human mobility. What seems to be rather more plausible is that a state’s territory is submerged and the entire population is forced to move individually or needs to be relocated in its entirety. The question to be then interpreted under international law is whether a state maintains its statehood even without a territory. This scenario is not to be confused with military occupation, in which case state territory is defined but is under the effective control of another state. In the case of endangered states, the geographical area of the state territory will no longer be a natural part of the Earth’s surface. Moreover, one could argue that with the loss of territory the state loses its settled population as well. Additionally, governments in exile have been recognized under international law, but can statehood survive “in exile”? Furthermore, does a state with submerged territory and its entire population, including its government residing in another state’s territory, possess the capacity to enter into international relations?

⁴⁷⁸ James Ker-Lindsay: *Climate Change and State Death. Survival*, 58 (4) pp.73-94. p.73

⁴⁷⁹ Ker-Lindsay, p. 74

As it is beyond the scope of this dissertation to answer these questions and to provide a plausible legal explanation to the question of statehood with regards to endangered states, I will move on to discuss the issue of stateless persons, who are often dealt with under international law adjacent to asylum-seekers and refugees.

Stateless persons are individual persons who are not considered as a national/citizen by any State under the operation of its (domestic) law. This is usually a product of the ineffective dissolution of larger States such as the Soviet Union or the Former Yugoslavia, but can just as generally be the result of domestic rules on citizenship disabling certain persons permanently residing in a state's territory to obtain its citizenship, as in the case of many Arabic countries in the Gulf. As Molnár⁴⁸⁰ explains, the issue of statelessness is approached from two directions by the international community. First, the 1954 Convention Relating to the Status of Stateless Persons aims to designate the appropriate standard of international protection, which is a status comparable to other forms of international protection, such as a refugee status. Secondly, the 1961 Convention on the Reduction of Statelessness focused on preventing statelessness in the future and reducing the number of stateless persons as much as possible.

Similarly, to the 1951 Geneva Convention on the Status of Refugees, the minimum standard of treatment for stateless persons is established, beyond which states are free to provide additional protection. The most fundamental rights to be granted by the receiving state, whereby the same protection is to be granted as is accorded to nationals, are the right to documents of identification, access to court, naturalisation, elementary education, public relief and assistance, social security and the duty of taxes. Moreover, stateless persons are to be granted treatment at least as favourable as accorded to aliens generally in terms of the right to acquire movable or immovable property, right to housing, right to association, right to employment and self-employment, the right to free movement and to choose their place of residence freely (within the receiving state). Contrary to the Geneva Convention on the Status of Refugees, the 1954 Convention does not provide the exact same protection from refoulement, but article 31 does stipulate that Contracting States shall not expel a stateless person lawfully in their territory except on the grounds of national security, or public order.⁴⁸¹ The 1954 Convention also omitted to prescribe the rules on the procedure to

⁴⁸⁰ Tamás Molnár: Stateless Persons under International Law and EU Law: a Comparative Analysis Concerning their Legal Status, with Particular Attention to the Added Value of the EU Legal Order, *Acta Juridica Hungarica*, 51, No 4, pp. 293-304 (2010) p. 294

⁴⁸¹ Molnár p. 296

determine statelessness, which means that such decisions are discretionary to the sovereign states receiving the stateless persons.

Under these international conventions on stateless persons, international protection is provided to persons who are stateless due to a conflict of laws or as a consequence of states succession. These rules do not cover those individuals and definitely not groups of persons, whose territories disappeared or became uninhabitable due to climate change or environmental degradation. Although in particular due to sea-level rise certain states may disappear, which is what Pacific Island States or the Alliance of Small Island States are legitimately afraid of, whether their statehood is terminated or whether they become stateless is beyond the scope of this dissertation. The imminent challenge is to find a protective framework that applies to “planned and staggered migration of affected populations” caused by the state territory becoming uninhabitable.⁴⁸²

CHAPTER CONCLUSIONS

In contrast to international environmental law, where dispute resolution is limited, international human rights law has international tribunals, committees and rapporteurs to investigate. It is a challenge to establish the scope of the binding obligations, the jurisdiction, the causation, the damage, and certain human rights are derogable in times of emergency, nevertheless, international human rights law may at least serve as a framework of approach. Application of international human rights law instead of international environmental law is preferable as that focuses on the harm suffered and not on the cause of the harm, or the responsibility for that harm, which may prove to be practically more fruitful. Also, while international disaster relief law provides concrete protection, only to populations in a very particular situation, omitting to protect other vulnerable groups. At the same time, while raising climate change as a human rights issue puts a face on the problem and the sense of urgency increases, an overly anthropocentric approach also delays solutions, as for the time being the human species is not on the verge of extinction, unlike other living species on Earth.⁴⁸³

In conclusion, a comprehensive approach to climate change induced human mobility requires states to prevent and prepare for displacement before it occurs, and to respond to the needs of displaced persons, and those who stayed or got trapped, and to seek durable

⁴⁸² Bodansky et al (2017) p.322

⁴⁸³ Bodansky et al (2017) p.300

solutions to end their displacement and facilitate voluntary return. I will assess these in the next section.

CHAPTER 5: THE INTERNATIONAL LEGAL FRAMEWORK ON HUMAN MOBILITY AND ITS LEGAL GAPS CONCERNING ENVIRONMENTALLY INDUCED HUMAN MOBILITY

Before I start to analyse the international legal framework on human mobility in depth, as mentioned earlier, it must be reinforced that the international legal framework on human mobility is only a fragmented framework much like a jigsaw puzzle for which not all pieces are at our disposal, because they haven't even been printed yet. There are but a dozen international conventions regulating an aspect or a type of human mobility, and some of those were drafted in times of crisis reacting to a specific and particular historic situation of emergency. Additionally, most of the legal documents derive from human rights law but some are connected to international trade and economic globalism. Moreover, the implementation and application of these limited number of conventions is even more diverse creating inequalities among those displaced and political tensions between affected states. Furthermore, due to the structure of international law, the international legal framework on human mobility is divided on two levels in general, three levels in Europe, between the universal regime and the regional regimes. This creates a matrix of regulations where not all elements are yet drafted. Nevertheless, customary international law is increasingly clear thanks to the active jurisprudence of regional human rights courts, resulting even in the declaration of particular rights and principles as peremptory norms.

In this chapter I will assess whether the current porous international legal framework on human mobility is able to provide protection for environmentally displaced persons. To this end, I will assess general human rights law concerning the Freedom of Movement and the Right to Asylum. Then, I will profoundly examine international refugee law to understand the fundamental definitions, the institutional development as well as the operational aspects of the Right to Asylum and I will point out those opportunities for improvement or innovative application. I will then briefly demonstrate that if and when there is an economic interest, states establish zones of free movements to facilitate international economic relations, whether bilateral or multilateral. I will also assess how these spaces of free movement could be considered as a means of adaptation to the negative effects of climate change, inducing human mobility. Finally, I will summarize the most recent trends in migration global governance for future prospects.

Although at this point in time, it would be an overstatement to call the loose bundle of international legal norms related to the status of refugees, migrants workers, and displaced persons an autonomous and cohesive regime of international law, Aleinikoff⁴⁸⁴ also notes that undoubtedly there is a budding new field of international law in the form of international conventions on certain forms of migration. In my interpretation, international law on human mobility (which, for the purposes of this dissertation, will be referenced as International Human Mobility Law or IHML) derives from International Human Rights Law, which serves as a legal context or background to the more specific regulations. Additionally, regional trade co-operations, as well as bilateral economic agreements all serve as a source for regulating human mobility under international law.

In this chapter I will assess the various areas of international human mobility, such as the freedom of cross-border movement and residence (migration essentially), asylum-seeking (international protection for refugees), as well as displacement (other form of protection), free labour movement, and return. In terms of the type of legal resources, there are those which are issue specific, meaning that they focus on a certain category of human mobility. Additionally, there are those which touch upon a certain aspect of human mobility, such as the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children and the Protocol against the Smuggling of Migrants by land, sea and air (supplementing the United Nations Convention against Transnational Organized Crime). Moreover, there are international organization (such as the UNRWA, the UNHCR and IOM, among others), whose statutes and outputs are fundamental in the regulating and managing international human mobility. Furthermore, reaffirming and sometimes expanding the scope of the conventional core, elements of the customary international law on human mobility include, for example the Bangkok Principles (1966), the Cartagena Declaration (1984), as well as UNHCR's Guiding Principles on Internal Displacement. And finally, the international community is on the road to a global governance of migration via a wide range of cooperative multi-state processes, which I will present in more detail and with a focus on the topic of "environmental refugees".

At this point I must also reinforce that neither of these above listed documents deny a sovereign state's right or power to determine who and under what conditions may enter and reside in their territory. It is not the claim of this dissertation that sovereign states, as

⁴⁸⁴ Aleinikoff, T. A.: International legal norms on migration: substance without architecture (chapter 26) In: Cholewinski, R – Perruchoud, R – MacDonald, E. (eds): International Migration Law, Den Haag, TMC Asser Press, 2007. pp. 467-480, p. 474.

members of the international community give up even part of their sovereignty but merely to create harmonized international regulations which respect, protect and fulfil the basic human rights of the persons of concern and respect and enforce the sovereignty and national security of the affected states. It is my understanding based on the concepts of human security that these two objectives are not mutually exclusive. As I will demonstrate, the international community can establish a framework yielding a win-win situation. Conceptualizing and treating this bundle of international rules as a single body of law, International Human Mobility Law, as an autonomous field of International Law, allows us to create a comprehensive and operational legal context to some of the most current migration and asylum issues we face, also anticipating the permanent changes in our natural environment. Such a comprehensive legal framework can produce a state, where human rights of the individuals and the sovereignty of the states are maintained and protected, while also contributing to international peace and security.

5.1. THE FREEDOM OF MOVEMENT

The roots of the international legal framework on human mobility (or IHML) can be found in international trade as well as in International Human Rights Law (IHRL). It is my understanding of these international human rights documents that, considering the historical context, the State Parties agreed on minimum standards based on previous unfortunate experiences, reacting to a particular crisis that rolled out or was waiting to unfold, and did not have the intention to create a comprehensive and substantial system of legal regulations concerning the Freedom of Movement and the Right to Asylum to be implemented on a national level by the State Parties.

As mentioned in the previous chapter, in my understanding, there are three basic elements of human mobility, which always occur, and there are two other elements, which only occur in certain cases: a) leaving the country of origin, b) arriving in the country of destination, c) staying in the country of destination, as well as d) passing through a country of transit, and e) having to leave the country of transit or the destination (expulsion) or voluntarily returning to the country of origin. I will assess the following human rights instruments searching for these elements of the freedom of movement. First of all, human rights instruments are very particular with regards to a person's freedom of movement. Such legal instruments clearly distinguish between movement within the internationally recognised borders of a state and the cross-border movement of an individual with regards to a state's

borders. As demonstrated in the following table everyone (including citizens and lawfully residing non-citizens) have the right to move freely within the territories of the state.

Table 14 The right to the freedom of movement

UDHR (1948)	art 13 (1)	“Everyone has the right to freedom of movement and residence within the borders of each state.”
ADHR (1948)	art 8	“Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will.”
ECHR (1950)	art 2 (1)	Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
ICCPR (1966)	art 12(1)	Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
ACHR (1969)	art 22 (1)	Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.
ACHPR (1981)	art 12 (1)	Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
Arab Charter (2004)	art 26 (1)	Everyone lawfully within the territory of a State party shall, within that territory, have the right to freedom of movement and to freely choose his residence in any part of that territory in conformity with the laws in force.
ASEAN DHR (2012)	art 15	Every person has the right to freedom of movement and residence within the borders of each State.

The Universal Declaration of Human Rights incorporates both the Freedom of Movement and the Right to Asylum as fundamental freedoms. Subsequently, the International

Covenant on Civil and Political Rights of 1966 (ICCPR) stipulates an individual's freedom of movement, their freedom to choose their place residence, as well as their freedom to leave any country. This Freedom of Movement is stipulated explicitly with regards to domestic movements, within a State Party's border, and the ICCPR is laconic on cross-border movements. The ICCPR makes it clear that an individual is at liberty to leave a country of their nationality or otherwise but is silent on where this individual may go. Finally, the Vienna Declaration on Human Rights as the output document of the World Congress on Human Rights in 1993 repeats the UDHR in stipulating the right to seek and to enjoy asylum, and has a separate section on the rights of Migrant Workers but is silent on the Freedom of Movement in general.

With regards to the freedom to leave one's country of origin, international human rights instruments are unequivocal.

Table 15 The right to leave

UDHR (1948)	art 13 (2)	Everyone has the right to leave any country, including his own.
ADHR (1948)	art 8	“Every person has [...] not to leave [the country of residence] except by his own will.”
ECHR (1950)	art 2 (2)	Everyone shall be free to leave any country, including his own.
ICCPR (1966)	art 12 (2)	Everyone shall be free to leave any country, including his own.
ACHR (1969)	art 22 (2)	Every person has the right to leave any country freely, including his own.
ACHPR (1981)	art 12 (2)	Every individual shall have the right to leave any country including his own, and to return to his country.
Arab Charter (2004)	art 27 (1)	No one may be arbitrarily or unlawfully prevented from leaving any country, including his own, nor prohibited from residing, or compelled to reside, in any part of that country.
ASEAN DHR (2012)	art 15	Every person has the right to leave any country including his or her own, and to return to his or her country.

The ICCPR, the ECHR, the ACHR, and the ACHPR all expressly state that the freedom to move within the territory and the right to leave may not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or the rights and freedoms of others.

Once the freedom to leave a country has been established, practical logic would require that the right to enter or at least the rules to enter another state shall be established too. However, the relevant human rights instruments are silent on what happens under international law with a person who leaves their country of origin. This is with respect to the sovereignty of states that provides that individual states have the right to determine the rules and requirements of entry of aliens. Such rules are a priori defined in domestic immigration regulations but under bilateral agreements concerning the citizens of the state parties, or sometimes even multilaterally in a regional setting. This applies to the right (short-term) stay, temporary or permanent reside in the country of destination.

While transiting in terms of human mobility is frequently referenced, if the person on the move has a country of destination in mind that is not adjacent to its country of origin, under international law, a right to transit cannot be established in any way. Logically, the right to enter and the right to short stay would apply. Transit zones are customary at international airport throughout, but penitentiary border transit zones have been introduced by the Hungarian government during the mass influx of persons in 2015.

Finally, return may be voluntary or forced, entailing the right and the obligation to return to one's country of origin. Apart from the Arab Charter, international human rights instruments do not establish the prohibition of expelling a citizen. Aliens may be expelled but only in accordance with the rule of law, and collective expulsions are prohibited. The rules on voluntary return and expulsion are the following.

Table 16 The right to return

UDHR (1948)	art 13 (2)	Everyone has the right [...] to return to his country.
ADHR (1948)	-	n/a
ECHR (1950)	art 4	Collective expulsion of aliens is prohibited.

ICCPR (1966)	art 12 (4)	No one shall be arbitrarily deprived of the right to enter his own country.
ACHR (1969)	art 22 (6) & (9)	An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law. The collective expulsion of aliens is prohibited.
ACHPR (1981)	art 12 (4)- (5)	A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.
Arab Charter (2004)	art 26 (2)	No State party may expel a person who does not hold its nationality but is lawfully in its territory, other than in pursuance of a decision reached in accordance with law and after that person has been allowed to submit a petition to the competent authority, unless compelling reasons of national security preclude it. Collective expulsion is prohibited under all circumstances.
	art 27 (2)	No one may be exiled from his country or prohibited from returning thereto.
ASEAN DHR (2012)	-	n/a

I compiled the table of the relevant legal documents in a chronological order, as they show very evident progress in terms of the detail to which a certain provision stipulates the rules of protection, the circumstances considered, and even the actual individual legal redress. As a general rule, based on the texts of the above listed legal documents, we can establish that all human rights conventions provide general clauses on human rights, which are left to be elaborated by the regional judicial practice. To sum up the regional conventional provisions:

- nationals and non-nationals legally residing in a state may move and reside freely within the border of that State;

- it is prohibited to expel nationals from the State of nationality,
- it is prohibited to collectively expel non-nationals from the State, and legal guarantees must be provided for individual expulsion as well,
- nationals and non-nationals are free to leave any country, even their own,
- non-nationals have the right to seek asylum in a particular country.

We can conclude from this list of rights that no human right document supersedes the sovereignty of a state when it comes to a state's right to determine who and under what condition may enter their territory. However, once an alien is residing legally in the State's territory, they may only be expelled individually and in compliance with domestic law providing legal guarantees against arbitrary (individual or collective) expulsion. There is an obligation however to receive asylum applications and to conduct asylum proceedings to establish whether or not the applicant may be recognized as a refugee. If they do, then the State must grant asylum because, as I will demonstrate in the next subchapter, asylum decisions are of a declarative and not a constitutive effect. The conditions of an application for international protection according to Human Rights Law is persecution. Only the Arab Charter on Human Rights references political asylum in particular, restricting the scope of applications, while the ASEAN Human Rights Declaration does not specify what the cause of displacement must be and leaves it in the competence of domestic jurisdictions. I will elaborate on the actual rules on human mobility under international law in the next chapter.

Another aspect to consider is that the human rights of persons of concern must be respected, protected and fulfilled in climate change mitigation and adaptation.

[Table 17 A comparison of the human rights of a person of concern]

International Covenant on Economic, Social and Cultural Rights (1966)	(none) <i>Bearing in mind that the provisions of the ICESCR must be applied to nationals and non-nationals on the territory of a State Party, persons exercising their Freedom of Movement (in the terms of IHRL) are also entitled to the respect and protection of their economic, social and cultural rights.</i>
Vienna Declaration of Human Rights (1993)	Article 23. The World Conference on Human Rights reaffirms that everyone, without distinction of any kind, is entitled to the right to seek and to

	<p>enjoy in other countries asylum from persecution, as well as the right to return to one's own country.</p> <p>[A separate section on Migrant Workers]</p> <p>33. The World Conference on Human Rights urges all States to guarantee the protection of the human rights of all migrant workers and their families.</p>
--	--

It is beyond the scope of this dissertation to do profound analysis of what rights persons of concern possess, and essentially the content of the available protection. Instead I aim to focus on how a person of concern may obtain a legal status in case of environmentally or climate change induced human mobility.

5.2. REFUGEE PROTECTION

In terms of the Right to Asylum, there are two parallel but complementary legal regimes in place. First of all, there is the international human rights law regime on the right to asylum, Secondly, there is international refugee law, which derives from and is rooted in International Human Rights Law. This is evidenced from the fact that the Universal Declaration on Human Rights in 1948 was the first ever international document to proclaim the Right of Asylum⁴⁸⁵⁴⁸⁶, which has since gained customary status in international law. Therefore, while the main objective of International Refugee Law is to protect the fundamental rights of those persecuted and therefore these provisions rely on the *aquis* of International Human Rights Law, the two regimes are in fact separate and deliberately kept so due to their particularities and political contexts by the State Parties to such conventions.

5.3.1. The (human) right to Asylum⁴⁸⁷

⁴⁸⁵ General Assembly resolution 217 Articles 13 and 14.

⁴⁸⁶ Right here we face a question of interpretation, with the Right to Asylum which is colloquially referenced as the Right of Asylum. However, prepositions in legal jargon are definitive. While the preposition of „to” indicated a certain direction, the preposition „of” is possessive. However, the international community would only like to provide a pathway to international protection but is not obliged to grant asylum according to International Human Rights Law.

⁴⁸⁷ Asylum is often divided into two categories. Territorial asylum is provided in the state territory for persons who are persecuted for political reasons or other related ordinary crimes, while diplomatic asylum is granted for the same reasons but still within another state's jurisdiction, warships, military aircraft and camps. (Fangary p. 35) Most jurisdictions favour territorial asylum, rather than diplomatic asylum, therefore the latter remains a state prerogative, rather than a customary rule of international law. This division will be omitted in this dissertation due to its lack of relevance with regards to environmentally induced human mobility.

It has been clarified in the previous chapter that the primary obligation to protect persons in distress lies with their home state. However, in this section I will scan the relevant human rights instruments to understand whether asylum is a fundamental human right under international law, and what does the right to asylum mean in fact.

[A comparison of international human rights instruments on the Right to Asylum. Table 18]

UDHR (1948)	art 14 (1) & (2)	Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.
ADHR (1948)	art 27	Every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements.
ECHR (1950)	-	n/a
ICCPR (1966)	-	n/a
ACHR (1969)	art 22 (7)	Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.
ACHPR (1981)	art 12 (3)	Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions.
VDHR (1993)	art 23	The World Conference on Human Rights reaffirms that everyone, without distinction of any kind, is entitled to the right to seek and to enjoy in other countries asylum from persecution, as well as the right to return to one's own country.

Arab Charter (2004)	art 27	Everyone has the right to seek political asylum in another country in order to escape persecution. This right may not be invoked by persons facing prosecution for an offence under ordinary law. Political refugees may not be extradited.
ASEAN DHR (2012)	art 16	Every person has the right to seek and receive asylum in another State in accordance with the laws of such State and applicable international agreements.

The Universal Declaration of Human Rights, the American Declaration of Human Rights, the American Charter of Human Rights as well as the African Charter of Human rights all stipulate the right to asylum. The European Convention on Human Rights, as well as the Charter of Fundamental Rights in the European Union, omit any such provisions but all European states, especially the EU Member States are parties to the International Convention on the Status of refugees of 1951. We can thus establish that the right to asylum is a universal human right. But what is it actually mean? A colloquial synonym for asylum is shelter, meaning protection. In fact, the above mentioned legal instruments explicitly provide that everyone has the right to seek and to enjoy protection, once granted. This is an essential difference with regards to international refugee law, which as I will later on demonstrate, only grants international protection to those who are formally recognised as refugees.

Subsequently, I would like to present the fundamental definitions of International Refugee Law to explain their legal application. During this assessment, I will provide an overview of the regulatory and institutional framework of the international protection of asylum seekers and refugees in a way to observe the evolution of this unique regime.

5.3.2. The institutionalisation of international asylum law/international migration services/ The UN framework

Although over the course of history, many people sought asylum, asylum law itself only dates back to the early 20th century. According to Nagy, before the First World War, there was no need to regulate the international mobility of individual persons as most States recognized the Freedom of Movement and Settlement (with some local and temporary exceptions).⁴⁸⁸ With the closures of state borders, the general spread of passports and visas, during years of the League of Nations, the first groups of persons such as the Russians, the

⁴⁸⁸ Kende et al p.526

Armenians and the Germans and Austrians fleeing fascism were recognized as refugees – without having to prove individual threat. The explicit shift in this approach came about after the Second World War, with the International Convention Relating to the Status of Refugees, signed in 1951, in Geneva.⁴⁸⁹ This shift in the beginning of the 20th century, was directly caused by the two world wars and is owed to the fact that the dimensions and the magnitude of the refugee flows increased enormously, and individual asylum seekers were applying *en masse*.⁴⁹⁰ As I will explain next, to protect persons of concern and manage the overwhelming situation, asylum management internationalised and institutionalized under the auspices of the newly set up United Nations.

The immediate years after the Second World War produced the largest displacement in the world, up to that point. In response to the mass and vast atrocities of the two world wars, recognising that rebuilding Europe was an enormous challenge that had to be addressed with joint efforts, and so the Allied Powers set up the United Nations Relief and Rehabilitation Administration (UNRRA) in 1944. Although the initial mandate of the UNRRA was to aid and rebuild the war-torn region, it ended up providing assistance to thousands of displaced persons and aided their return upon the end of the war. Nota bene: the Union of Soviet Socialist Republics (USSR) did not allow the UNRRA to operate on its own territories. Following the end of the war the UNRRA continued to assist the return of those displaced by war, but soon enough those displaced did not wish to return home. The founding members of the UNRRA debated whether only those who wish to return should be assisted or everyone should be assisted regardless of their destination. Either way funds started running out, and the United States of America (USA), which provided up to 70% of the funds of the UNRAA decided that they would no longer finance the UNRRA after 1947.⁴⁹¹

Consequently, recognising that a more long-term institution was necessary given the circumstances, the United Nations set up the International Refugee Organisation in 1947, assuming most of the roles of the previous UN Relief and Rehabilitation Administration concerning displacement. The IRO was not intended to protect all persons as persons who supported “the enemy” or even contributed to or perpetrated war crimes in the Second World

⁴⁸⁹ The International Convention Relating to the Status of Refugees of 1951 (hereinafter referred to as the Refugee Convention or the Geneva Convention) and its additional protocol of 1966 (hereinafter referred to as the New York Protocol and together referred to as the Refugee Conventions).

⁴⁹⁰ Bruhács János: Nemzetközi Jog II. Különös Rész, Dialóg Campus, 2014. p. 221

⁴⁹¹ UNHCR: A világ menekültjeinek helyzete – A humanitárius segítségnyújtás öt évtizede, UNHCR Magyarországi Képviselete, Budapest, 2000 p. 15-16.

War, as well as "persons of German ethnic origin" who had been expelled, or were to be expelled from their countries of birth into post-war Germany, and therefore as individuals would "not be the concern of the Organization".⁴⁹²⁴⁹³ It was also enshrined in its Constitution that although displaced persons, who wished to move to a country other than their own would not be assisted. If they objected to their return with a valid reason (of persecution), they would not be 'forced' to return to their own countries.⁴⁹⁴ This subtle shift from focusing on assisted return to assisted relocation caused tensions among the founders, and eventually the IRO closed its operations in 1952. The IRO's responsibilities were then assumed by other organisations, such as the United Nations High Commissioner for Refugees (UNHCR) and the Intergovernmental Committee for European Migration (ICEM, known today as the International Organisation for Migration (IOM)).

In fact, at first the ICEM was also established temporarily, as the Provisional Intergovernmental Committee for the Movements of Migrants from Europe (PICMME), for a definite term of 12 months on 5th of December, 1951, subject to review "the need for its continuing existence"⁴⁹⁵. Reading the constitution of the PICMME, it must be pointed out that the organisation did not use a strict or a consistent definition of refugees and without further explanation merely referred to persons of concern as refugees and migrants, as shown in the example below:

"That the purpose of the Committee will be to make arrangements for the transport of migrants, for whom existing facilities are inadequate and who could not otherwise be moved, from certain European countries having surplus population to countries overseas which offer opportunities for orderly immigration, consistent with the policies of the countries concerned;"⁴⁹⁶

„That among the migrants with whom the Committee will be concerned are included refugees and new refugees for whose migration arrangements may be made between the Committee and the governments of the countries affording asylum."⁴⁹⁷

⁴⁹² https://treaties.un.org/doc/Treaties/1948/08/19480820%2007-01%20AM/Ch_V_1p.pdf

⁴⁹³ Only the following 26 states became members of IRO: Argentina, Australia, Belgium, Bolivia, Brazil, Canada, Republic of China, Chile, Denmark, the Dominican Republic, France, Guatemala, Honduras, Iceland, Italy, Liberia, Luxembourg, the Netherlands, New Zealand, Norway, Panama, Peru, the Philippines, Switzerland, the United Kingdom, the United States, and Venezuela.

⁴⁹⁴ IRO Constitution Section C art. 1.

⁴⁹⁵ PICMME

⁴⁹⁶ Constitution of PICMME article 2

⁴⁹⁷ Constitution of PICMME article 4 https://governingbodies.iom.int/sites/g/files/tmzbd11421/files/council_document/0%20-%20Resolution%20to%20establish%20a%20Provisional%20Intergovernmental%20Committee%20for%20the%20Movement%20of%20Migrants%20from%20Europe%20%28headed%29.pdf

By the mid-fifties due to the efflux of refugees from Hungary after the 1956 revolution among other events, the PICMME was converted into a permanent organisation called the ICEM.⁴⁹⁸ Subsequently, in the 1980s, ICEM drops the 'E' and becomes the Intergovernmental Committee for Migration (ICM), extending its services to Africa and Asia, while maintaining its operations in Europe.⁴⁹⁹ Currently, the Constitution of the Intergovernmental Organisation for Migration (IOM), the descendent of the ICM, defines its purpose and function as such:

“[...] (a) to make arrangements for the organized transfer of migrants, for whom existing facilities are inadequate or who would not otherwise be able to move without special assistance, to countries offering opportunities for orderly migration; (b) to concern itself with the organized transfer of refugees, displaced persons and other individuals in need of international migration services for whom arrangements may be made between the Organization and the States concerned, including those States undertaking to receive them; [...]”⁵⁰⁰

There are no further explanations; migrants, refugees, displaced persons, and other individuals in need of international migration services, all qualify as persons of concern. This tells me that in reality, there comes a point of emergency and urgency when the precise legal definition of a legal status does not contribute to the resolution of an issue, it actually rather distracts attention from the main objective, and that is to provide protection. Over the decades of the second half of the 20th century and the first decades of the 21st century, the IOM proved to be the most flexible, adaptive, and efficient organisation in international migration services, reacting to situations of crisis, extending their services to those in need.

Reverting to the 1940s, responding to a very concrete crisis in a very concrete manner, the international community set up the UN Relief and Works Agency for Palestine Refugees (UNRWA) in the Near East, in 1949. The UNRWA defined persons of concern as „persons whose regular place of residence was Palestine during the period of 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict”⁵⁰¹. As we can see, unlike the PICMME, the ICEM/ICM and the IOM, the statute of the UNRWA gave a very concrete definition for a ‘Palestinian refugee’. This is due to the fact that unlike the previously introduced organisations, which were handling various flows of refugees at the same time, the international community identified a specific group of

⁴⁹⁸ <https://www.iom.int/fifties>

⁴⁹⁹ <https://www.iom.int/iom-history>

⁵⁰⁰ IOM Constitution <https://www.iom.int/iom-constitution>

⁵⁰¹ UN General Assembly Resolution no. A/RES/302 (IV) (8 December 1949)

persons of concern, recognising the international community's shared responsibility in resolving the conflict, and thus the UNRWA was set up to address a single conflict, which produced a mass efflux of refugees from a certain geographical location, namely Palestine.⁵⁰² Although the UNRWA was also set up as a transitional institution, with the unresolved conflict in Palestine still ongoing, the UNRWA continues its operations to this day.⁵⁰³

Parallel to the abovementioned provisional and ad hoc institutions, a significant part of the international community wanted to set up a permanent refugee agency as well. Recognising that displacement is not caused by war alone but also political shifts in countries, it became clear that refugee flows will be recurring at different times, in different parts of the world. In 1949, the UN General Assembly decided to set up the United Nations High Commissioner for Refugees (UNHCR) with merely 35 votes for, 5 against and 11 abstentions.⁵⁰⁴ Following the adoption of its Statute in 1950, the UNHCR started its operations in 1951. Additionally, an Advisory Committee on Refugees was established by the Economic and Social Council and was later reconstituted as the United Nations Refugee Fund (UNREF) Executive Committee. The latter was replaced in 1958 by the Executive Committee of the High Commissioner's Programme.

UNHCR's mandate is to provide international protection, under the auspices of the United Nations, to refugees who fall within the scope of its Statute, and to seek out permanent solutions for any issues concerning refugees⁵⁰⁵. According to the Statute, 'refugees' are:

- “Any person who has been considered a refugee under the Arrangements of 12 May 1926 and of 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization.”
- “Any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside

⁵⁰² Nota bene: according to the Hungarian Helsinki Commission's interpretation internally displaced Palestinians are also covered by the UNRWA. https://www.helsinki.hu/wp-content/uploads/UNHCR_Palesztin_1D.pdf (Letöltés ideje: 2020. május 4.)

⁵⁰³ <https://www.unrwa.org/what-we-do/unrwa-statistics-bulletin>

⁵⁰⁴ UNHCR p.19

⁵⁰⁵ UNHCR Statute para. 1 <https://www.unhcr.org/3b66c39e1.pdf>

the country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.”

- “Any other person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.⁵⁰⁶

From its inauguration, UNHCR was also charged with providing protection to stateless persons.⁵⁰⁷ Additionally, in 1998, the UN Secretary General commissioned a report on internal displacement, as internal displacement was growing at an unprecedented rate. This inquiry resulted in the soft-law document titled Guiding Principles on Internal Displacement, which was adopted by UNHCR and subsequently by the UN GA in 2005.⁵⁰⁸ With these mandate reforms, the UNHCR’s competence today covers refugees, stateless persons as well as internally displaced persons.

For the purposes of the Guiding Principles, ‘internally displaced persons’ (IDPs) 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 in order 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 recognised State border⁵⁰⁹. Interestingly the Guiding Principles refer to International Human Rights Law and International Humanitarian Law but omit to refer to international Refugee Law. This proves that there is a deliberate intention to distinguish between asylum-seekers and refugees, seeking protection from persecution crossing an internationally recognised State border, and IDPs, who are displaced by man-made or natural disasters and who do not cross an internationally recognised state border. Also, in doing so, as well as due to the fact that the Guiding Principles are only soft-law to be applied by the UNHCR, the definition of IDPs, includes the reference to man-made disasters and natural disasters. This does not only lead to the expansion of the definition of displacement but it also opens the door for new definitions.

⁵⁰⁶ <https://www.unhcr.org/4d944e589.pdf> UNHCR Statute Chapter II

⁵⁰⁷ UNHCR Statute Chapter II

⁵⁰⁸ UNGA Res 60/1 The 2005 World Summit Outcome

⁵⁰⁹ UNHCR Guiding Principles on Internal Displacement art 2. <https://www.unhcr.org/43ce1cff2>

That is why the IOM has by now come up with the definition of ‘environmentally displaced persons’.

In conclusion, it is important to highlight these structural and institutional changes for two reasons. First of all, we can observe creation and the internationalisation of the asylum management system. Secondly, it yields as a reminder of the fact that the UN as an organisation, is a structure, which is rather fluid when it comes to advisory or executive committees and specialized agencies when action is needed. Depending on funding opportunities of the UN Member States, the state of world affairs, and of course political will, at first ad-hoc organisations are established in response to situations of crisis, then the international community course corrects, and finally, in due course, sometimes over a span of many decades, an imperfect but operational and satisfactory system of protection is rolled out.

However, as Biermann & Boas state, the maximum number of persons the UNHCR can currently deal with is merely a fraction of the additional number of the predicted “climate refugees”.⁵¹⁰ Therefore capacity building and resource management is key.

5.3.3. The Universal Regime on Refugee Protection

Parallel to the establishment of ad-hoc and temporary organisations capable of providing operational help during time of crisis and emergency, the Geneva Convention was drawn up with an aim to manage the efflux of asylum seekers fleeing persecution and the horrors of the Second World War. In order to share the burden, the International Convention Relating to the Status of Refugees was signed, placing an international legal obligation on State Parties to take part in refugee relief efforts.

There was a heated debate during the drafting of the Geneva Convention, as the future convention was placing a legal obligation on the State Parties, therefore it was essential to define the term ‘refugee’ in a way that created a permissible obligation on the members of the international community. As a result, the compromise was that the refugee definition shall be based on the concept of the ‘well-founded fear of persecution’. Additionally, the State Parties also agreed on certain characteristics to which this persecution must pertain. The exhaustive list of such ‘protected characteristics’ are: (1) race, (2) religion, (3) nationality, (4) membership of a particular social group or (5) political opinion. The Refugee Convention itself does not provide an authentic interpretation of the term ‘persecution’.

⁵¹⁰ Biermann & Boas p. 74

According to Nagy, persecution is an arbitrary threat to the life and freedom of a person. This may entail many forms of action or omission from the part of the persecutor, may they be a state actor or a non-state actor, such as a paramilitary group. Persecution is typically perpetrated by pressuring, threatening, intimidating, discriminating or being violent. The essence of persecution is the infringement of the most basic human rights, without a legal redress.⁵¹¹ According to Renaud et al., the term “persecution” implies an “element of intent to harm or failure to prevent harm from occurring”⁵¹². This persecution is then motivated by essentially discriminating against a particular protected characteristic, whether real or presumed by society or the perpetrator.⁵¹³

Persecution is defined as a crime against humanity under the Rome Statute of the International Criminal Court. As Thorp explains, in *Prosecutor v Simic*, the ICTY Trial Chamber identified two elements of the crime of persecution: (i) the actus reus: the act of discrimination in fact, which denies or infringes upon a fundamental right laid down in international customary or conventional law, and (ii) the mens rea: the intention to discriminate on one of the listed grounds. Thorp adds that although certain scholars claim that an international climate crime, such as ecocide may equate to persecution, identifying the actual persecutor is difficult.⁵¹⁴ This reverts us to earlier discussions around state responsibility. Although industrialised countries are believed to have contributed to global warming and thereby climate change, the responsibility of the countries of origin may also be established. Accepting that environmental displacement is caused by the accumulation of various displacement inducing factors, we must acknowledge the responsibility of the countries of origins as well. I will elaborate on the concept of common but differentiated responsibility in more detail in the next chapter.

Moreover, in 1951 there were two other restrictions, a temporal and a geographical restriction to the scope of this definition. The scope was limited to events occurring before the 1st of January 1951 in Europe. It was the 1966 New York Protocol that struck the reference to the world wars and thereby expanded the definition of refugees to any occurrence of persecution. Also art. 2. (3) eliminated the geographical reference to Europe as well, expanding the temporal and territorial scope of the Refugee Conventions to any persecution anywhere any time.

⁵¹¹ Kende et al p.531

⁵¹² Renaud, F – Bogardi, J. J. – Dun, O – Warner, K.: *Environmental Degradation and Migration*, Berlin Institute, 2016. p. 2

⁵¹³ Kende et al p.532

⁵¹⁴ Thorp p.70

[Definitions of the 1951 Geneva Convention and its 1966 New York Protocol Table 19]

Geneva Convention (1951)	New York Protocol (1966)
<p>Article 1 - Definition of the term "refugee" art A. (2): <u>As a result of events occurring before 1 January 1951</u> and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.</p>	<p>Article 1 [General Provisions] para. 2: „For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article I of the Convention as if the words "As a result of events occurring before 1 January 1951 and..." and the words "...as a result of such events", in article 1 A (2) were omitted.</p>
<p>Article 1 - Definition of the term "refugee" art B. (1): „For the purposes of this Convention, the words "events occurring before 1 January 1951" in article 1, section A, shall be understood to mean either (a) "events occurring in Europe before 1 January 1951"; or (b) "events occurring in Europe or elsewhere before 1 January 1951"; and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.”</p>	<p>Article 1 [General Provisions] para. 3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article I B (I) (a) of the Convention, shall, unless extended under article I B (2) thereof, apply also under the present Protocol.</p>

Furthermore, the Refugee Convention does not mention, therefore does not explicitly recognise the right to asylum, although it was enshrined in the Universal Declaration of

Human rights already in 1948, three years prior to the signing of the Geneva Convention, as explained earlier. This comes to show just how polemic this convention of the State Parties was. However, art. 33 does establish the principle of non-refoulement. This prohibition of expulsion or return means that “no Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”. Finally, the 1967 UN Declaration on Territorial Asylum⁵¹⁵ as a General Assembly resolution, soft-law and evidence of customary international law reaffirms the respect for refugee status by states other than the one granting asylum and reaffirms the principle of non-refoulement.

Thorp introduces a very practical solution to why the Refugee Convention may not apply to environmentally displaced persons. Simply, article 1 D of the Refugee Convention provides that the convention shall not apply to persons who are at present receiving protection and assistance from organs or agencies of the United Nations, other than UNHCR. In practice, several UN organs and agencies already assist existing and potential victims of climate-induced displacement.⁵¹⁶ However this also confirms that once the UNHCR start providing certain protection and assistance to persons they may qualify as refugees. This depends on the UNHCR’s statute and mandate.

Some scholars claim however, that in very specific and individual situations, those affected by climate change are deprived or denied access to resources because of their race, religion, nationality, membership of a particular social group, or political opinion then they could qualify as refugees. In the same vein, victims of environmental disasters may also qualify, if their government consciously withheld or obstructed assistance in order to punish or marginalise them based on one of these characteristics. However, in such instances, these are not exactly the impacts of climate change itself that render a person a refugee.⁵¹⁷

5.3.4. Regional Regimes on Asylum and Refugee Protection

In the table below I summarised, in chronological order, the various definitions of the term ‘refugee’ and the conditions of obtaining such legal status in different regions of the world. Looking at the regional contexts, while there is no regional convention on refugees in Europe – and even the EU applies the same refugee definition as the Geneva Convention in its acquis

⁵¹⁵ <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/236/47/PDF/NR023647.pdf?OpenElement>

⁵¹⁶ Thorp p.69

⁵¹⁷ Bodansky et al (2017) p.319

-, the refugee definition in Africa and America is broader than the definition of the Geneva Convention. Alternatively, in Europe, and more specifically within the European Union, instead of adding new reasons for seeking asylum, the Qualification Directive introduced a scale of protection that an asylum-seeker is entitled to.

[Definitions of 'Refugee' under regional refugee conventions Table 20]

<p>African Refugee Convention (1969/1974) Art. 1 (1)-(2)</p>	<p>For the purposes of this Convention, the term “refugee” shall mean every person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”</p> <p>„The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”</p>
<p>Bangkok Principles (1966)</p>	<p>„A refugee is a person who, owing to persecution or a well-founded fear of persecution for reasons of race, colour, religion, nationality, ethnic origin, gender, political opinion or membership of a particular social group: (a) leaves the State of which he is a national, or the Country of his nationality, or, if he has no nationality, the State or Country of which he is a habitual resident; or, (b) being outside of such a State or Country, is unable or unwilling to return to it or to avail himself of its protection;</p>

	<p>The term “refugee” shall also apply to every person, who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”</p>
<p>OAS Cartagena Declaration (1984) Article 3 (3)-(4)</p>	<p>„Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”</p> <p>„To confirm the peaceful, non-political and exclusively humanitarian nature of grant of asylum or recognition of the status of refugee and to underline the importance of the internationally accepted principle that nothing in either shall be interpreted as an unfriendly act towards the country of origin of refugees.”</p>
<p>Kampala Convention on IDPs (2009) Art. 1(k)</p>	<p>“Internally Displaced Persons” means 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 in order 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”.</p>
<p>The European Union</p>	<p><i>(The Charter on Fundamental Human Rights explicitly refers to the Refugee definition of the Geneva Convention.) Quote Article 18 here</i></p>

The African Union's Member States are more ambitious than other regions of the world in terms of drafting conventions. Not only does the AU have its own regional refugee convention, but building on the UNHCR's Guiding Principles on Internal Displacement, in 2009, the special summit of the AU, held in Kampala, adopted the Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) and subsequently the Protocol on the Protection and Assistance to Internally Displaced Persons (the Great Lakes Protocol). The African Union's Refugee Convention of 1969, in addition to cases of persecution under the Geneva Convention, also references circumstances substantiating refugee status as "events seriously disturbing public order". As I have explained in more detail in the previous chapter, environmental deterioration and climate change may directly and indirectly lead to such events. A sudden, overwhelming environmental disaster or the negative effects of climate change obviously disturb public order. Likewise, a gradual change in the natural environment may lead to loss of property, which may even lead to a disturbance in public order through illicit property acquisition, as experienced after Hurricane Katrina in the USA. Additionally, the Kampala Convention entered into force in 2012, and has so far been signed by 40 out of 55 African Union Member States and ratified by 33. The relevance of this convention in terms of environmentally induced human mobility, and in particular climate change induced human mobility, is undeniable, as it explicitly recognises the increasing incidence of displacement caused by environmental factors, including climate change and requires states to address climate change in an effort to find durable solutions to climate change induced human mobility. The significance of this convention is that there is now a legal obligation on State Parties to help those persons in their own territory, who were displaced within the state borders, by man-made and natural hazards as they require state parties to domesticate the Guiding Principles and implement them in their domestic jurisdictions. In addition, the Kampala Convention also contains compliance and monitoring mechanisms.⁵¹⁸

The American Convention on Human Rights limits the right of asylum for political offences. Although conventional regional law is therefore restricted to political asylum, regional customary law defines the right of asylum more broadly. The Cartagena Declaration on Refugees was adopted by a "Colloquium on the International Protection of Refugees in Central America, Mexico and Panama" in 1984, as an effort to respond to the humanitarian crisis and grave violations of human rights, and other situation of indiscriminate violence

⁵¹⁸ Bodansky et al (2017) p.315

around Central America. At the time, most countries in the region were not State Parties to the 1951 Refugee Convention and its 1967 New York Protocol, nor the American Convention of Human Rights.⁵¹⁹ Although the Cartagena Declaration in itself is a non-binding document, states in the region have confirmed its value subsequently in the San José Declaration on Refugees and Displaced Persons (in 1994), the Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America and the Caribbean (in 2004), the Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas (in 2011), the Brazil Declaration and Action Plan of 2014, and the 100 points of Brasilia in 2018. The Inter-American Commission on Human Rights reaffirmed its authority, and the Inter-American Court of Human Rights has underscored its binding character as the minimum content of the right to seek and to be granted asylum.⁵²⁰ Fangary claims that for Latin America, asylum relates to political issues and refugee status is related to the protection provided to persecuted individuals based on their race, religion, sex, social group or political opinion.⁵²¹ In the latter case, each OAS Member State has their own system and procedures in place. Thus the Latin American traditional obligation on states is to apply the right to seek and receive asylum, followed by the availability of due process for determining refugee status.⁵²² The right to receive asylum is accomplished when the asylum state grants international protection, provided the applicant fulfils the criteria of refugee status. The right to seek and to receive asylum is not absolute, it is executed according to international conventions and domestic legislations.⁵²³ The Inter-American Court of Human Rights also confirmed that international conventions contain the minimum requirements beyond which state parties may not restrict their implementation and application of refugee status. Similarly, to the African Union's Refugee Convention, the Cartagena Declaration, in addition to cases of persecution under the Geneva Convention, circumstances substantiating refugee status are "internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order". As I have explained in more detail in the previous chapter, environmental deterioration and climate change may lead to internal conflicts or other circumstances which seriously disturb public order. Again, while it is undisputed that the negative effects of environmental deterioration and climate change are infringing human rights, it would be

⁵¹⁹ Juan Ignacio Mondelli: Reshaping Asylum in Latin America as a Response to Large-Scale Mixed Movements: A Decade of Progress and Challenges (2009-2019), UNHCR Americas Bureau, 2020 p.4

⁵²⁰ Mondelli p.6

⁵²¹ Fangary p.36

⁵²² Fangary p.36

⁵²³ Fangary p.37

hard to pinpoint the perpetrator of a massive human rights violation, therefore a claim based on this ground would be farfetched in my interpretation. Moreover, the Cartagena Declaration is not legally binding, therefore application of the intended rule is yet to be seen.

It is important to highlight that the Arab Charter only recognizes political asylum but the Arab Charter never entered into force. While from the above table we may conclude that apart from the Arab Charter on Human Rights, there are no more regional mechanism on the Asian continent, it must also be highlighted that there is an interregional cooperation in the field of refugee protection. In 1966, at the Asian-African Legal Consultative Organization's session in Bangkok, Thailand, a resolution was passed on the status and treatment of refugees. Art. 1 of the Bangkok Principles⁵²⁴ define the following protected characteristics: race, colour, religion, nationality, ethnic origin, gender, political opinion or membership of a particular social group. Not only are there additional grounds for persecution, such as colour, nationality, ethnic origin and gender, in comparison to the Geneva Convention, but the Bangkok Principles also expand the grounds for a refugee status, in addition to persecution, to „events seriously disturbing public order”. This confirms the definition of the African Union's Refugee Convention.

In contrast to the above regional mechanisms, there isn't a 'European refugee convention'. This is partly due to the fact that the Geneva Convention initially aimed at managing the European Refugee Crisis of the 1940s and 1950s. This is also due to the fact that almost all European states are State Parties to the Geneva Convention as well as the European Convention on Human Rights. As mentioned earlier, the European Convention on Human Rights does not include particular provisions on the right to seek asylum. This clearly demonstrates that when the Geneva Convention was drawn up, it was tailored to the specifics of the European context at the time so that there was no further need to elaborate on the right to seek asylum in the subsequent regional conventions. Additionally, those Council of Europe Member States that are also members of the European Union, are also bound by the EU's asylum regime. Out of all the regional protection regimes, the one in the European Union is the most specific and elaborate, therefore I will assess this in more detail. I start my analysis with the Founding Documents as sources of International Law and then move on to assessing the secondary sources of EU law, the relevant directives and regulations.

Firstly, the European Union's Fundamental Rights Charter in art. 18 titled “right to asylum” merely refers to the Refugee Convention, thereby in practice adopts the identical

⁵²⁴ Asian-African Legal Consultative Organization (AALCO) Final text of the AALCO's 1966 Bangkok Principles on Status and Treatment of Refugees, as adopted on 24 June 2001 at the AALCO's 40th session.

refugee definition: “The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.”⁵²⁵ Secondly, Art. 3 para. 2. of the Treaty on the European Union⁵²⁶ and art. 67 para. 2 and art. 78⁵²⁷ of the currently in force Treaty on the Functioning of the European Union (TFEU) authorizes the EU to establish the EU’s Common European Asylum System. As a shared but autonomous competence of the European Union⁵²⁸, the Common European Asylum System aims to make the asylum system in the territory of the EU more effective and to avoid “asylum shopping”⁵²⁹. Thus, the proclamations of the Founding Treaties are elaborated in the Common European Asylum System (CEAS)⁵³⁰ to be reformed with the New Migration and Asylum Pact.⁵³¹ The CEAS includes substantive and procedural rules, complemented by the Schengen Acquis⁵³², and the institutional framework, namely the European Union Agency for Asylum (EUAA)⁵³³ and the Asylum, Migration and Integration Fund

⁵²⁵ https://www.europarl.europa.eu/charter/pdf/text_en.pdf

⁵²⁶ „The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.”

⁵²⁷ „The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.” TFEU art. 78

⁵²⁸ [https://www.europarl.europa.eu/RegData/etudes/note/join/2011/453178/IPOL-LIBE_NT\(2011\)453178_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/note/join/2011/453178/IPOL-LIBE_NT(2011)453178_EN.pdf) p.6

⁵²⁹ „In the context of the Dublin Regulation, the phenomenon where a **third-country national** applies for **international protection** in more than one EU Member State with or without having already received international protection in one of those EU Member States.” https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/asylum-shopping_en

⁵³⁰ Európai Parlament: Menekültügy Forrás: <https://www.europarl.europa.eu/factsheets/hu/sheet/151/a-menekultugyi-politika> Letöltés ideje: 2021. május 4.

⁵³¹ The CEAS includes (i) Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (Qualifications Directive); (ii) Directive 2013/32/EU on common procedures for granting and withdrawing international protection (Asylum Procedures Directive); (iii) Directive 2013/33/EU laying down standards for the reception of applicants for international protection (Reception Conditions Directive); (iv) Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (also known as Dublin III Regulation); (v) the Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (Temporary Protection Directive); and (vi) the EURODAC Regulation (EU) No 603/2013.

⁵³² The most relevant elements of the Schengen Acquis are the Regulation (EU) 2016/399 on the Schengen Borders Code and the Regulations on the Schengen Information System (SIS I; SIS II), the Community Code on Visas; the Regulation on the Integrated Border Management Fund.

⁵³³ Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum

(AMIF)⁵³⁴. For the purposes of this dissertation, I will continue with the assessment of the Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (Qualifications Directive), the Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (Temporary Protection Directive)⁵³⁵ and the relevant work of the EUAA.

[Legal qualifications of an asylum-seeker in the EU Table 21]

Refugee (Qualifications Directive art. 2 (d))	„means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 [a ground for exclusion] does not apply”
Person eligible for subsidiary protection (Qualifications Directive art. 2 (f))	„means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) [a ground for exclusion] does not apply, and is unable, or, owing to such risk,

⁵³⁴ REGULATION (EU) No 516/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 establishing the Asylum, Migration and Integration Fund

⁵³⁵ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof

	unwilling to avail himself or herself of the protection of that country” Without the content of Art. 15 this is an empty shell
Beneficiary of temporary protection on grounds of the principle of non-refoulement (Qualifications Directive Art. 21(1))	„Member States shall respect the principle of nonrefoulement in accordance with their international obligations.”
Displaced Persons (Temporary Protection Directive art. 2(c))	„means third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organisations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular: (i) persons who have fled areas of armed conflict or endemic violence; (ii) persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights.”
Humanitarian Visa (Visa Code art. 25(1)a)	“A visa with limited territorial validity shall be issued exceptionally, [...] when the Member State concerned considers it necessary on humanitarian grounds.”

According to the Qualification Directive, an application for international protection may yield a refugee status or subsidiary protection.⁵³⁶ As we can read in the above table, the Qualification Directive adopts the refugee definition of the Refugee Convention and adds

⁵³⁶ Qualification Directive art. 2(b)

the exclusionary grounds. Unlike, in other regions such as Africa and America, there are no additional circumstances broadening the definition. However, instead of creating a regional definition or regional application of the refugee definition, the Qualification Directive creates a scale of three levels of protection for those fleeing persecution, serious harm or who cannot be returned. So instead of expanding the definition, the EU adds additional, clearly defined categories of protection to other persons of concern, namely persons who are or would be facing serious harm or who cannot be returned. The aforementioned second category, subsidiary protection, within the same asylum application procedure, may be granted to those who are facing serious harm. According to art. 15 of the Qualifications Directive: “serious harm consists of: (a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict”. Finally, the third category of protection may be understood as a last resort for persons of concern. If a person is not recognized as a refugee at first, nor as a beneficiary of subsidiary protection, asylum authorities must determine whether in the individual case there is a ground for the application of the non-refoulement principle. Now, the Qualification Directive does not determine those specific instances⁵³⁷ for non-refoulement, and is left to be determined on a case by case basis, provided that there are no grounds for exclusion in the applicant’s case.

It must also be pointed out that according to preamble (15) of the Qualification Directive, those third-country nationals or stateless persons who are allowed to remain in the territories of the Member States for reasons not due to a need for international protection but on a discretionary basis on compassionate or humanitarian grounds fall outside the scope of the Directive. According to the Visa Code Member States may exceptionally, at their own discretion issue a humanitarian visa with limited territorial validity and thereby under domestic law grant a temporary residence permit on humanitarian grounds in that particular Member State, provided that the applicant is not entitled to international protection. Back in 2017, there was a motion in the European Parliament to request the potential introduction of a European Humanitarian Visa, but the procedure died off.⁵³⁸

⁵³⁷ This three categories of protection is easily demonstrated by the Hungarian Act 2 of 2007 on the Legal Entry and Residence of Third Country Nationals in Hungary, implementing the Qualification Directive, which uses three distinct legal terms for each category of protection: „menekült” (refugee), „oltalmazott” (beneficiary of subsidiary protection), and „befogadott” (a person who may not be returned – directly translatable as ‘accepted’ or ‘adopted’).

⁵³⁸ [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2017/2270\(INL\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2017/2270(INL))

The Qualification Directive together with other relevant asylum procedures envisaged a scenario, where an individual asylum seeker enters the Member State in a premeditated, prepared, timely and regular manner. However, as experiences of the past 40 years prove, there might be a sudden, overwhelming mass influx of asylum seekers creating a refugee crisis at the frontiers of Fortress Europe and within the Union. Since the birth of the European Union (1992), there was a refugee crisis in the mid-90s due to the War in the territory of the former Yugoslavia, in 2011 in Malta and Italy due to the Arab Spring, in 2015 in Hungary and Greece due to the Syrian Crisis, and in 2022 in Hungary, Poland, and Romania due to the Russia-Ukraine war. The European Union also extended the protection of displaced persons by introducing temporary protection in case of a mass influx of persons, who had to leave.

Initially, the need for a Temporary Protection Directive arose as back in the day there were 15 separate asylum systems on the territory of the EU. Temporary protection regimes are classically implemented as emergency responses to mass influx situations. In contrast to the 1951 Convention which is implemented by means of individualised status determination, temporary protection is group-based protection which is used by states to prevent the blocking of asylum systems, whilst also providing immediate protection to those in need. Crucially, prior to the adoption of subsidiary protection, temporary protection status broadened the narrow understanding of a “refugee” as enshrined in the Geneva Convention, although the protection status - in contrast to subsidiary protection - is generally regarded as an exceptional measure only to be applied in situations of mass influx.⁵³⁹ We must mention that the Temporary Protection Directive is clear on its purpose, which is to decrease “the risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection”⁵⁴⁰ and „to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons”⁵⁴¹.

Essentially, in order to activate the Temporary Protection Directive four conjunctive conditions must be met according to the definition of the term ‘mass influx’ in the TPD: „[1] Arrival in the Community of a [2] large number of [3] displaced persons, [4]who come from a specific country or geographical area, whether their arrival in the Community was

⁵³⁹ European Commission: Final Report on Study on the Temporary Protection Directive, January 2016. p. 4

⁵⁴⁰ Temporary Protection Directive Art. 2 (a)

⁵⁴¹ Temporary Protection Directive Art. 1

spontaneous or aided, for example through an evacuation programme”⁵⁴². As we can see there is a temporal, a geographical, a personal and a quantitative aspect to the grounds of Temporary Protection. Firstly, ‘arrival in the Community’, as a destination, may refer to crossing a Schengen border or the secondary movements of asylum seekers within the borders of the EU, which reflects the intention of the EU to prevent the collapse of any asylum system in the EU. Also, the mode of ‘arrival’ may be spontaneous, sudden, gradual, or even aided. Secondly, the mass influx of asylum seekers must mean a large number. This may sound obvious, but the TPD does not provide any further explanation or minimum requirements. When read together with the aforementioned purposes of the TPD, any number of persons who put significant pressure on an asylum system, thereby risking the adequate fulfilment of the needs of the persons of concern, exhausts the requirement of mass influx. Thirdly, the geographical origin of this influx must be well-defined or identifiable, which means that displaced persons must come from a particular country or geographical area. Therefore, according to the European Commission, it is conceptually impossible to grant a single temporary protection to persons coming from multiple geographical locations or countries.⁵⁴³⁵⁴⁴ Finally, the last, the most strict and the most restrictive condition of the Temporary Protection is the definition of ‘displaced persons’ as cited above. Only those persons who are fleeing armed conflict or violations of human rights may be granted temporary protection. This definition is very similar to the definition of ‘serious harm’ regarding subsidiary protection but it does not grant protection, even if temporary, for those displaced by other overwhelming circumstances, such as environmental deterioration or the adverse effects of climate change.

From the above I conclude that the EU refugee protection system is the most comprehensive in terms of the scale of protection and the most developed in terms of detailed regularisation and legal practice, which are supported directly by EU agencies and funds. However, the Member States of the European Union proved to be unambitious concerning the actual definition of ‘refugee’ as they have simply adopted, and by merely referencing, the refugee definition of the Refugee Convention. As Zetter has also pointed it out⁵⁴⁵, EU Member States have implemented the practice of restricting the application of the refugee

⁵⁴² Temporary Protection Directive Art. 2 (d)

⁵⁴³ Final report of the Commission p.16-18.

⁵⁴⁴ For example see the Temporary Protection scheme granted to asylum seekers from Cuba, Puerto Rico and Haiti by the United States of America.

⁵⁴⁵ Zetter, 2007. Page number missing

status. Moreover, although the number of irregular migrants entering the EU has plummeted since the 2015 Refugee Crisis, the securitization of migration continues.⁵⁴⁶ This recent trend therefore substantiates that the legal interpretation of the definitions of the Refugee Convention will continue to be restrictive in the region. The African Union's asylum system is also extensive, as it further developed the asylum regulations of the past century and follows the progress made by the relevant international agents, such as UNHCR. While the OAS demonstrates some political ambition, outside of the court rooms of the Inter-American Court of Human Rights, ambition is not followed by action.

All in all, as Nagy concludes the refugee definition of the Geneva Convention is universal, but additionally quite a number of categories of regional protection have been developed, and while the Geneva Convention applies to individual asylum seekers, regional institutions have recognized the need to provide protection *en masse* for an affected group of persons.⁵⁴⁷

5.4. THE PRINCIPLE OF NON-REFOULEMENT, OR THE PROHIBITION TO RETURN

As demonstrated in the tables above, it is the sovereign right of a state under international law to determine the legal obligation for an alien to leave the jurisdiction of the state. Once the legal conditions require, the person is expelled and may even be forcefully removed (deported), if the person of concern does not comply with the expulsion decision. Such rules are determined under the sovereign jurisdiction of a state and circumstances are governed by domestic law. However, there are certain circumstances which, under international law, place an international obligation on the receiving state and prohibit the return of the person of concern. In this section I will assess the case when an asylum-seeker is not granted refugee status but is unable to or unwilling return to their country of origin, therefore they must be granted some form of protection regardless.

The Principle of Non-Refoulement was first inscribed in the 1933 Convention relating to the status of Refugees adopted within the framework of the League of Nations. Currently, at the universal level, the Fourth Geneva Convention (1949), the 1951 Refugee Convention, the International Covenant on Civil and Political Rights (1966), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) include provisions on the prohibition of return. Regionally, the African Refugee Convention (1969),

⁵⁴⁶ FAKHOURY 2016. p.6

⁵⁴⁷ Kende Tamás – Nagy Boldizsár – Sonnevend Pál – Valki László: Nemzetközi Jog. Complex Kiadó, Budapest, 2014, p. 528

the African Charter on Human and Peoples' Rights (1981), the American Convention on Human Rights (1969), the Inter-American Convention on Extradition (1981), the Inter-American Convention to Prevent and Punish Torture (1985), and the Cartagena Declaration (1984), as well as the European Convention on Human Rights (1950) include such provisions. Non-refoulement is also a well-defined norm of customary international law.

As I mentioned earlier, granting refugee status is declaratory in nature, meaning that once a person fulfils the criteria contained in the Refugee Convention, they are recognized as a refugee and they do not become a refugee.⁵⁴⁸ This also means that once they are recognized as refugees, they may not be returned to their country of origin, under art. 33 (1) of the Refugee Convention.⁵⁴⁹ In this vein, the Principle of Non-refoulement applies not only to recognized refugees but asylum-seekers, whose status has not been formally declared and who were rejected. In the latter case, those rejected for being a threat to national security or public order, are not covered by the prohibition of return. However, under the International Human Rights Law, the host state's non-refoulement obligation still stands, as International Human Rights Law does not permit any exceptions from it.⁵⁵⁰ Under the Refugee Convention, the principle of non-refoulement constitutes an essential and non-derogable component of international refugee protection, whose fundamental and non-derogable character has also been reaffirmed by the Executive Committee of UNHCR in numerous conclusions. Similarly, the General Assembly has called upon States "to respect the fundamental principle of non-refoulement, which is not subject to derogation." The prohibition of refoulement to a danger of persecution under international refugee law is applicable to any form of forcible removal, including deportation, expulsion, extradition, informal transfer or "renditions", and non-admission at the border in the circumstances described below. Article 33(1) of the 1951 Convention, which refers to expulsion or return (refoulement) "in any manner whatsoever". However, the application of the principle of non-refoulement does not grant asylum in a particular state.

⁵⁴⁸ Nagy Boldizsár: A magyar menekültjog és menekültügy a rendszerváltozástól az Eruópai Unióba lépéséig. Gondolat Kiadó, Budapest, 2012 p.59

⁵⁴⁹ Art. 33 (1) prohibition of expulsion or return ("refoulement") 1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

⁵⁵⁰ Sir Elihu Lauterpacht – Daniel Bethlehem: Refugee protection in international law: the scope and content of the principle of non-refoulement: Opinion In: Refugee Protection in International Law: UNHCR's Global Consultations on International Protection (edited by Erika Feller, Volker Türk and Frances Nicholson, Cambridge University Press, 2003) p.131

Conceptually, the interpretation of the principle of non-refoulement and/or asylum is still debated among migration scholars. Some scholars distinguish between asylum and non-refoulement, in that the former relates to the admission of the foreigner to a receiving state's territory, while the latter concerns a prohibition of forcible return. Others also treat asylum and non-refoulement separate but conclude that asylum is derived from the concept of non-refoulement. A third group of scholars argue that the obligation of non-refoulement on the receiving state is tantamount to the right of asylum in negative terms, based on the non-entrée policy.⁵⁵¹ However, the application of the principle of non-refoulement does not automatically grant refugee status in a particular state. The broad principle of non-refoulement does establish a complementary protection for asylum-seekers, which is implemented in complete sophistication in Europe, and in particular within the European Union.

In its advisory opinion, the Inter-American Court of Human Rights declared that even if diplomatic asylum is not stipulated in neither the American Convention on Human Rights, nor the American Declaration of Human Rights, state parties must abstain from returning persons of concern to a territory where there might be a danger to their life, physical integrity and/or liberty.⁵⁵² The Inter-American Court of Human Rights⁵⁵³ has stipulated multiple times that the principle of non-refoulement, the prohibition of return is a peremptory norm of international law, and so it is a non-derogable, erga omnes obligation on states. The right to non-refoulement is recognized when the life, integrity and/or liberty of a person of concern, regardless of their migratory status is in danger. Non-refoulement is a specific category of asylum, as it is a certain type of protection for asylum-seekers against removal decisions.⁵⁵⁴ Similarly, the European Court of Human Rights declared that although the convention does not guarantee a right to asylum or refugee status, it prohibits the forcible return (refoulement) of persons of concern to a country where they may be subjected to treatment contrary to article 3 of the European Convention of Human Rights, namely the prohibition of torture, inhumane or degrading treatment.⁵⁵⁵ Interestingly, regarding the jurisprudence of the African Court of Human Rights, the exhaustion of domestic remedies was examined with regards to the prohibition of forcible return. In a case, the Court dispensed the requirement of the

⁵⁵¹ Esraa Adnan Fangary: A peculiar leap in the protection of asylum seekers – the Inter-American Court of Human Rights Jurisprudence on the protection of asylum seekers In: *The Age of Human Rights Journal*, 16 of June, 2021 p.40

⁵⁵² Fangary p.32

⁵⁵³ Fangary p.33

⁵⁵⁴ Fangary p.39

⁵⁵⁵ Jelena Ristik: The Right to Asylum and the Principle of Non-Refoulement Under the European Convention on Human Rights. *European Scientific Journal*, Vol. 13 No. 28. p.112

exhaustion of domestic remedies, where the complainant is in a life-threatening situation that makes domestic remedies unavailable.⁵⁵⁶

Additionally, according to Ristik other provisions of the European Convention on Human Rights may also give rise to a state's obligation of non-refoulement, such as the right to life (art 2), the prohibition of slavery, servitude and forced labour (art 4), the right to liberty and security (art 5), the right to a fair trial (art 6), the prohibition of retroactive criminal punishment (art 7), right to respect for private and family life (art 8), the right to freedom of thought, conscience and religion (art 9), freedom of expression (art 10), freedom of assembly and association (art 11), prohibition of discrimination (art 14), collective expulsion of aliens (art 4 of Protocol No. 4), and exclusion of own nationals (art 1 of Protocol No. 7).⁵⁵⁷ Article 3 of the European Convention on Human Rights as an absolute prohibition, does not allow any exceptions, not even for reasons of public order or national security.⁵⁵⁸

Bodansky et al claim that in order to trigger the prohibition of return in terms of climate impacts, these must amount to "cruel, inhumane or degrading treatment", and although some courts have held that breaches of social and economic rights, such as devastating humanitarian conditions, can amount to inhuman or degrading treatment, Bodansky et al. cite the same court decisions which distinguished such conditions from generalised poverty, unemployment or lack of resources and services.⁵⁵⁹ Therefore they are of the opinion that those persons of concern seeking protection from future or even imminent impacts may not be able to trigger the application of the principle of non-refoulement.

Save for the European Union's *acquis* this complementary protection is not formally codified under international law, even though regional human rights courts confirm the absolute obligation of state parties to provide such protection against forcible return.

In 2020, the Human Rights Committee explained the effect of climate change on a person's right to life under art 6 (1) of the International Covenant on Civil and Political Rights and provided guidance on how to apply the test of a „real risk of irreparable harm”.⁵⁶⁰ The complainant Ione Teitiota, a Kiribati national, applied for asylum in New Zealand on the basis that climate change affecting Kiribati exposed him to *inter alia* violent land disputes, a lack of drinking water, an inability to sustain a livelihood via agriculture due to soil

⁵⁵⁶ Gina Bekker: The Protection of asylum seekers and refugees within the African regional human rights system, *African Human Rights Journal*, (2013) 13 AHRLJ 1-29 p.16

⁵⁵⁷ Ristik p.114

⁵⁵⁸ Ristik p.116

⁵⁵⁹ Bodansky et al (2017) p. 320

⁵⁶⁰ HRC: Individual COmmunication No. 2728/2016 (Teitiota v New Zealand)

salinizations, and flooding. As a State Party to the relevant international conventions, based on the International Refugee Convention and the ICCPR, New Zealand rejected the application. Teitiota was thus removed to Kiribati. His complaint to the HRC argued that his removal from New Zealand constituted a breach of art 6 (1) of the ICCPR. Although the HRC decided that Teitiota's removal was lawful because the risk of irreparable harm was not appropriately established, this is a landmark decision for the future. The HRC confirmed that at the core of the right to life is the essential requirement of a dignified life. Additionally, the HRC clarified the kinds of climate change impacts that will have a bearing on an individual's right to life. The HRC explicitly referenced sea-level rise, which will likely render Kiribati eventually uninhabitable, making such conditions of life incompatible with the right to life at a certain point in time. Moreover, the HRC acknowledges the binding force of the economic and social components of the right to life, and now places an explicit obligation on states to ensure access to basic economic and social entitlements.

The significance of this case is paramount for Europe. As demonstrated in earlier chapters, the European Convention on Human Rights gives rise to the prohibition of forcible return based on article 3 on cruel and degrading treatment, as well as other human rights such as the right to life, and the right to private and family life, among others. The latter two are significant as the vast jurisprudence of the European Court of Human Rights in terms of environmental justice reference these particular human rights, among others such as the right to property, depending on the individual case. This means that should an individual applicant apply for asylum referencing the negative impacts of climate change on their right to life, which shall amount to the extent of an irreparable harm, and should their application be rejected in a domestic jurisdiction of a State Party, they could claim that should they be returned to their country of origin, their right to life would be in danger, the European Court of Human Rights would not have much room for consideration.

How to ascertain a real risk of irreparable harm to an individual's right to life. The HRC prior to the Teitiota case, held that ICCPR State Parties must safeguard individuals from reasonably foreseeable threats to their right to life connected to environmental degradation. The key consideration in the Teitiota case however was the time still available for the Kiribati authorities and the international community to intervene and to protect the population. The assessments focused on the intensity of climate change impacts already felt in Kiribati at the time of the application. Focusing on the present meant that the HRC excluded those grave risks which while reasonably foreseeable today, these would not eventuate until years to come. The real risk threshold is thus very high. In Teitiota's case, being affected by water

rationing implemented in response to salinization, the supply of fresh water being inaccessible, insufficient and unsafe, proved insufficient as a reasoning. Risks must be clearly arbitrary, erroneous or unjust.⁵⁶¹

5.5. DISPLACEMENT UNDER INTERNATIONAL DISASTER RELIEF LAW

There are two, legally non-binding international human rights documents that concern displacement due to natural disasters. These are the aforementioned 2004 UN Guiding Principles on Internal Displacement and the OCHA's Inter-Agency Standing Committee's (IASC) 2006 Operational Guidelines on the Protection of Persons in Situations of Natural Disasters. Firstly, as mentioned before, strictly speaking, these documents are merely "soft" international law and are legally non-binding upon states, even though the UN GA has recognised the UN Guiding Principles as "an important international framework for the protection of internally displaced persons"⁵⁶². Nevertheless, the UN Guiding Principles are binding on the UNHCR itself, and thus are applied and executed during its field operations. Secondly, the guidelines envisage that in case of a natural disaster the primary responsibility to manage disaster relief and to provide protection lies on national authorities of the affected state, supported by the assistance of international humanitarian agencies. This is to respect the sovereignty of states and to reinforce the hierarchy among the subjects of international law. Thirdly, these guidelines place no international obligation on any other state to intervene, to help or assist or even facilitate the management of such natural disasters in any way, other than those states that are in fact affected.

While sudden natural disasters are difficult to predict, refined climate models enable scientists to prognose the slow-on set effects of climate change, especially when restricted to a very specific geographical location. Such predictions would provide us with a very concrete map of "climate change hotspots" as discussed in previous chapters. Thus, were we to accept Biermann & Boas'⁵⁶³ claim that the core of the issue of "climate refugees" is not persecution but development policy, policy discussions may shift from disaster management to prevention. Therefore, climate change induced human mobility may be planned and organised, with the support of national governments, neighbouring states and within intraregional cooperation mechanism, and the financial support of the international community.

⁵⁶¹ Jefferi Hamzah Sendut: Climate Change as a Trigger of Non-refoulement Obligation under international Human Rights Law, on EJIL: Talk! February 2020

⁵⁶² Bronen (2017) p.137; UN GA Resolution 60/1 (2005)

⁵⁶³ Biermann & Boas p.74

This shift in approach is clarified by the increasing use of the term “climate displacement”, which is legally more accurate and politically less challenging.

The conceptual difference between (internally) displaced persons and refugees is not merely reference to a cross-border movement. The primary responsibility of protecting internally displaced persons, caused by armed conflict or natural disaster, lies with the state that they are the citizens or habitual residents of, whereas in case of a refugee the protection of the state of citizenship or habitual residence must be substituted by another state. However, conceptual similarities and even identities are apparent from other languages. Although some scholars have argued for the creation of the term “internal refugees”⁵⁶⁴ in English, the UNHCR finally chose the term IDP, while in other languages such as Hungarian, they are in fact defined as “internal refugees”. Mayer continues to argue that the reason why in International Refugee Law, internal protection responsibilities of the concerned state were omitted was exactly because local/domestic authorities are usually involved in carrying out or not preventing persecution. However, an environmentally displaced person is not (necessarily) fleeing the political rather than the geophysical space, which leaves room for regulation.⁵⁶⁵

On another note, emergencies are different from planned relocations, and thus neither instruments provide for the prospective needs of populations of concern, who are planning their permanent relocation. The IASC’s Operational Guidelines provide the need for informed consent and participation in decisions regarding the relocation process. The IASC’s Operational Guidelines were developed to respond to situations when pre-planning is impossible, and outline minimum core human rights from the International Covenant on Economic, Social and Cultural Rights. Their assumption is that these will be provided by humanitarian international organisations, meaning neither by the affected state or the host state, nor by the affected population themselves. In this vein, in March 2015, the Sendai Framework for Disaster Risk Reduction 2015-2030 incorporated planned relocation as a measure to achieve durable solutions.⁵⁶⁶ Subsequently, in 2016, the World Humanitarian Summit identified disaster and climate change induced human mobility as a humanitarian challenge, and a number of participants called for an international mechanism and legal framework for the protection of persons of concern.⁵⁶⁷ However, the legal framework has not been incorporated yet.

⁵⁶⁴ Mayer p.31

⁵⁶⁵ Mayer p. 31

⁵⁶⁶ Schade p.149

⁵⁶⁷ Bodansky et al (2017) p.324

5.5. HUMAN MOBILITY RELATED TO INTERNATIONAL TRADE AND NATIONAL ECONOMIC INTERESTS

When scanning the various legal regimes that guide human mobility, it must be mentioned that although the freedom of movement as a human right is limited and restricted, every single state in the world is actually involved in some type of a scheme that facilitates human mobility for the purposes of promoting their national economic interests. When there is a will, there is a way. Without going into a profound analysis of the reasons for this, a couple of aspects must be highlighted. As mentioned before, human mobility is a fact of life and therefore experience shows that restricting human mobility causes irregular migration. Whether this simple truth is explicitly acknowledged by the state concerned (the country of destination) or not, fighting irregular migration is one of the first priorities of all states, in terms of human mobility. One of the ways of eliminating or at least to confine irregular migration is to create channels of regular migration. Since industrialised countries are in need of skilled, highly skilled as well as unskilled workers, there are various bilateral or regional multilateral trade agreements that facilitate the flow of persons, and some even virtually remove all legal obstacles.

On a universal level, this is evidenced by the fact that shortly after the creation of the UN, the International Labour Organisation (ILO) created two conventions in order to oblige states to protect migrant workers: the Migration for Employment Convention (ILO Convention no. 97) in 1949, and the Migrant Workers Convention (ILO Convention no. 143) in 1975. However, the ILO leaves it up to the sovereign states to decide who they allow to enter, and under what conditions and for how long. The ILO merely seeks to encourage regular migration in the State Parties and to ameliorate the situation of those migrant workers who are residing on the territory of a State Party.

On a regional level, the most prominent example of free movement is the free movement and settlement of citizens within the European Union, and the Schengen Zone.⁵⁶⁸ This is a unique example of a space where the Freedom of Movement across internationally

⁵⁶⁸ Currently, 23 members fully implement the Schengen acquis. 4 Schengen Member States are members of the EFTA, and implement Schengen acquis through specific agreements related to the Schengen agreement. Iceland, Norway, Switzerland and Lichtenstein are associate members of the Schengen Area but are not members of the EU. They are part of the EFTA and implement the Schengen acquis through specific agreements related to the Schengen agreement. Monaco, San Marino, and Vatican City have opened their borders but are not members of the visa-free zone. The Azores, Madeira, and the Canary Islands are special members of the EU and part of the Schengen Zone, even though they are located outside the European continent. There are 4 more EU members that have not joined the Schengen zone: Ireland – which still maintains opt-outs, and Romania, Bulgaria, and Cyprus – which are seeking to join soon. <https://www.schengenvisainfo.com/schengen-visa-countries-list/> Switzerland is not a member of EFTA

recognized state borders is almost fully fledged. This means that citizens of a Member State of the European Union or the Schengen Convention may visit another Member State without a prior or an entry permit (visa) from the receiving State and without a travel document (passport or other domestic identification document). It must be highlighted that this right also covers legally residing non-citizens.. Only those third country nationals who are permanently settled in a Member State enjoy the same rights of free movement. Additionally, those citizens of a Member State who wish to settle and work in another Member State may do so without an employment permit or a residence permit. The only administrative provision is to register their new legal address for tax and social security purposes as well as public security. It must also be highlighted that this right is extended to third country nationals who are permanently settled in one of the Member States. In order to differentiate those persons, who move enjoying their right to free movement are legally and colloquially referred to as ‘free movers’.

Such an elaborate right of free movement also exists in the African Union under the Protocol⁵⁶⁹ to the Treaty establishing the African Economic Community relating to Free Movement of Persons, Right of Residence and Right of Establishment (Free Movement Protocol) adopted in 2018. The Free Movement Protocol, just like the Schengen Convention, grants a 90-day visa-free entry and short stay for the citizens of Member States in another Member State. This right is also not extended to third country nationals. Additionally, official state borders between Member States are not removed and therefore Free Movers are required to pass through an official state border point with a valid travel document, an internationally recognised passport⁵⁷⁰, for legal entry. Entry may be refused by a Member State, if the person exercising their right to free movement is a threat to national security, public order or public health under the domestic laws of the Member State.⁵⁷¹ Free movement is encouraged by addressing key target groups, such as border communities, students, researchers and workers. The Protocol provided for the gradual implementation of the right of free movement by prescribing three phases of implementation for the State Parties, including a roadmap: (1) implementation of the right to entry and abolition of visa requirements, (2)

⁵⁶⁹ https://au.int/sites/default/files/treaties/36403-treaty-protocol_on_free_movement_of_persons_in_africa_e.pdf

⁵⁷⁰ Interestingly, the Protocol calls for the creation of a uniform „African Passport” to facilitate the exercise of the right to free movement. Free Movement Protocol art. 10

⁵⁷¹ Free Movement Protocol art. 7

implementation of the right to residence, and (3) implementation of the right of establishment.⁵⁷²⁵⁷³

It must be noted that creating Zones of Free Movement require extensive legislation, as innumerable practical issues arise, such as the mutual recognition of official documents, educational qualifications, as well as social security and health care issues, tax regulations, just to name but a few. Both EU regulations and the African Union's Free Movement Protocol cover such issues for the practical realisation of the right to free movement.

Additionally, the 55 African states compile into 8 officially recognized African Regional Economic Communities: The Arab Maghreb Union (AMU), Community of Sahel-Sharan States (CENSAD), Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC), Economic Community of Central African States (ECCAS), Economic Community of Western African States (ECOWAS), Intergovernmental Authority on Development (IGAD), Southern African Development Community (SADC). These sub-regional communities also have various free movement schemes in place, which I will now briefly introduce in chronological order.

First off, the treaty establishing the Economic Community of Western African States (ECOWAS) was signed in 1975 and in 1979 a Protocol Relating to the Free Movement of Persons, Residence and Establishment was also signed. The Protocol stipulated among other things the right of community citizens to enter, reside and establish economic activities in the territory of member states and outlined a three-phased approach to achieve "complete freedom of movement" envisaged by the treaty. The three phases being (1) the right to enter (with the obligation to provide valid travel documents, and mutual recognition thereof) in 1979 and 1985, (2) the right of residence for employment purposes in 1986 and 1989, and (3) the right to establishment, meaning business in 1990.⁵⁷⁴ ECOWAS can also play a key role in local integration of refugees, as well as assist in repatriation and return. However, in a research project conducted locally in 2007, the UNHCR found that refugees remain in

⁵⁷² The African Union's Free Movement Protocol art. 5(1)

⁵⁷³ In January 2018 the African Union agreed to establish the African Continental Free Trade Area (AfCFTA) to open African markets to the free flow of goods and services from other African countries. At the same summit, the AU adopted a protocol supporting the free movement of persons between the countries of Africa. As of October 2022, 54 countries had signed the AfCFTA and of these, 44 had submitted their instruments of ratification. [Status of AfCFTA Ratification - tralac trade law centre](#) In contrast, according to the most recent status report on the protocol available (2019), 32 countries had signed the Free Movement of Persons (FMP) Protocol and only 4 (Mali, Niger, Rwanda, Sao Tome & Principe) of those had ratified the protocol and submitted their instruments of ratification. [36403-sl-PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY RELAT....pdf \(au.int\)](#)

⁵⁷⁴ Aderanti Adepaju, Alistair Boulton, Mariah Levin: Promoting integration through mobility: free movement and the ECOWAS Protocol, UNHCR Research Paper No 150. (New Issues in Refugee Research), 2007 p.1

limbo. They do not wish to stay in the receiving state in hope of repatriation and return, without actually willing to move back, nor do they want to obtain a regular immigration status under the ECOWAS Protocol as the prohibition of expulsion are not as strict.⁵⁷⁵ The challenge for UNHCR is to persuade persons of concern to integrate. Development policy is key, and that is why the EU is funding the free movement of IGAD.

The recurring and severe droughts and other natural disasters between 1974 and 1984 caused widespread famine, ecological degradation and economic hardship in the Eastern Africa region. Although individual countries made substantial efforts to cope with the situation and received generous support from the international community, the magnitude and extent of the problem argued strongly for a regional approach to supplement national efforts. In 1983 and 1984, six countries in the Horn of Africa (Djibouti, Ethiopia, Kenya, Somalia, Sudan and Uganda) took action through the United Nations to establish an intergovernmental body for development and drought control in their region, named the Intergovernmental Authority on Drought and Development (IGADD). The State of Eritrea became the seventh member after attaining independence in 1993. In 1996, to widen the scope of its subject-matter as well as its potential member states, the Assembly of Heads of State and Government made a Declaration to revitalise IGADD and expand cooperation among member states, and thus the Intergovernmental Authority on Development (IGAD) in Eastern Africa was created.⁵⁷⁶ In 2020, the Protocol on free movement in the IGAD region was also signed. According to this Protocol, the free movement of persons means the right of citizens of a member state, to enter, stay, move freely, study, work, establish business, and exit the host member state in accordance with the laws of the member state.⁵⁷⁷ This freedom of movement in general may only be limited by the host member state on the grounds of public policy, public security, public order or public health. Article 13 of the Protocol requires member states to facilitate the free movement of specific vulnerable groups including, victims of human trafficking, women at risk, unaccompanied children, separated from their families, persons with disabilities and elderly persons, as well as the “regular target groups” of students, researchers, and members of border communities⁵⁷⁸. Such provisions however are more like principles in their nature, rather than an individual justiciable rights. At the same time article 16 explicitly points out the movement of persons affected by disasters: “member states shall allow citizens of another member state who are moving in anticipation of, during

⁵⁷⁵ Adepoju et al p.19

⁵⁷⁶ African Union: The Intergovernmental Authority for Development: <https://au.int/en/recs/igad>

⁵⁷⁷ IGAD Protocol on Free Movement Preamble, art 5, art 8, art 9, art 11

⁵⁷⁸ IGAD Protocol on Free Movement art 14, art 15

or in the aftermath of disaster to enter into their territory provided that upon arrival they shall be registered in accordance with national law. Member states shall take measures to facilitate the extension of stay or the exercise of other rights by citizens of other member states who are affected by disaster in accordance with the provisions of the Protocol when return to their state of origin is not possible or reasonable.” As such a disaster is understood as a calamitous event or series of events not governed by the rules of international humanitarian law and resulting in widespread loss of life, great human suffering or distress, or large-scale material or environmental damage, thereby disrupting the functioning society. Recognising IGAD’s work, the European Union’s Emergency Trust Fund for Africa to promote inter-regional cooperation spent 14,952,500 euros between 2016 -2020, which was topped by an additional 5 million euros. Project locations include Djibouti, Ethiopia, Kenya, Somalia, Sudan, Uganda and South Sudan.⁵⁷⁹

The 1980s and 1990s remained a fruitful period for subregional cooperations. The Economic Community of Central African states was established in 1983 and right away a Protocol in Freedom of Movement and Right of Establishment was added to its statute. In a nutshell, the ECCAS stipulated the progressive abolition between member states of obstacles to the free movement of persons, goods, services and capital and to the right of establishment and article 40 even declared that “citizens of member states shall be deemed to be the nationals of the community”. In the same decade, the Arab Maghreb Union was also set up. Its instituting treaty of 1989 (between Morocco, Algeria, Lybia, Mauritania and Tunisia) explicitly states (art 2) that the AMU aims to gradually work towards achieving free movement of persons and transfer of services, goods and capital among them. However, cooperation in this field has been limited since the incorporation of the AMU. Moreover, not all regional mechanisms incorporated the issue of human mobility in their agenda. The South African Development Community was set up in 1992⁵⁸⁰, and although quite active in conducting disaster management programmes and projects, as well as environmental and those related to climate change, unlike its peers, there is no legal regime on the freedom of movement in place.

Nevertheless, the East African Community was also set up in 2000. As one of the fastest growing regional economic blocs in the world, the EAC is widening and deepening co-operation among the Partner States in various key spheres for their mutual benefit,

⁵⁷⁹ https://trust-fund-for-africa.europa.eu/our-programmes/towards-free-movement-and-transhumance-igad-region_en

⁵⁸⁰ SADC: South African Development Community <https://www.sadc.int/>

including political, economic and social. According to the EAC itself, at the moment, the regional integration process is “in full swing” as reflected by the encouraging progress of the East African Customs Union, the establishment of the Common Market in 2010 and the implementation of the East African Monetary Union Protocol. In May 2017, the EAC Heads of State adopted the Political Confederation as a transitional model of the East African Political Federation.⁵⁸¹

In the EAC, free movement applies to special categories of persons such as visitors, students, medical patients, persons in transit. The right of residence is an accessory right meaning that a citizen of a Partner State is only entitled to this right, if they move to another State as a worker or a self-employed person, or as a spouse, child or dependant of such a person. The freedom of establishment, free movement of services and the free movement of workers, means that all administrative restrictions should be removed, while it identifies certain services which must be liberalised (legal services, architectural services, research, advertising). There is a separate list of professions for each Partner State with regard to which the free movement of workers is to be implemented with different deadlines, a small circle of specialists, small group of highly skilled workers.⁵⁸² As Milej points out though, the current political climate does not promote free movement.⁵⁸³

The treaty establishing the Common Market for Eastern and Southern Africa (COMESA) of 2009 in the field of economic and social development (art 4 (6) e)) explicitly removes obstacles to the free movement of persons, labour and services, right of establishment for investors and the right of residence within the Common Market. Art 128 (k) explicitly promotes free movement of scientists, engineers and technologists within the Common Market, while in article 164 State Parties agree to conclude a protocol on the free movement of persons, labour, services and the right of establishment and residence. Moreover, among the fields of cooperation, article 4 (6) h) states that State Parties should cooperate in the development and management of natural resources, energy and environment as well and Chapter 16 pays special attention to the objective to preserve, protect and improve the quality of the environment. The COMESA statute is silent on disaster management and climate change.

Subsequently, the Community of Sahel-Saharan States CENSAD was set up in 2013 with the aim to focus its action on two major areas: regional security and sustainable

⁵⁸¹ EAC: The East African Community <https://www.eac.int/overview-of-eac>

⁵⁸² Milej p.751

⁵⁸³ Milej p.769

development. To this end, CENSAD shall pursue in particular the promotion of free movement of persons, goods and services.

Finally, the African Continental Free Trade Agreement of 2018 has not yet entered into force. Common market was to overcome the colonial structure, and an African common market would serve as an alternative to the linking of some selected African economies to the European Common market⁵⁸⁴ African RECs acknowledge the benefits of safe, orderly and regular migration, and overall recognise the positive contribution of migrants for inclusive growth and sustainable development, but while the legal frameworks are enacted, implementation lags behind.⁵⁸⁵ The objectives set out in the 2016 revised Migration Policy Framework for Africa and Plan of Action 2018-2027 do not go as far as the African Union's Agenda 2063 (titled "The Africa We Want"). While acknowledging the benefits of labour migration and declaring the flagship project of "African passports", the policy frameworks fail to abolish barriers to free movement, it is rather a harmonisation and improvement of migration governance in the region, whose implementation must take place between 4 to 12 years.⁵⁸⁶ In practice the free movement of people is only effective in four member states, namely Cameroon, Chad, Congo, and the DRC. The rest of the members require a visa, most on arrival.

Turning over from Africa to the American continent, the Mercado Común de Sur (MERCOSUR) must be highlighted. In 2010 the Council of MERCOSUR adopted a resolution titled "Estatuto de la Ciudadanía del MERCOSUR"⁵⁸⁷, calling for the creation of a 'MERCOSUR citizenship', just like an EU-citizenship, in order to facilitate the movement of citizens of MERCOSUR Member States. Citizens may travel without a passport, only using their national identification document and may stay temporarily in another Member State for up to 2 years without having to prove their purpose of stay. Such rights only cover the citizens of full Member States, such as Argentina, Brazil, Paraguay and Uruguay, and are also not extended to third country nationals, neither the citizens of Associate State Parties such as Bolivia, Chile, Colombia, Ecuador, Guyana, Perú and Surinam.⁵⁸⁸

It must also be mentioned that there are other bilateral and limited multilateral agreements to create free movement across neighbouring states, such as between the United

⁵⁸⁴ Tomasz Milej: Legal Framework for Free Movement of People within Africa – A view from the East African Community, *ZaoRV* 79 (2019), 935-970 p. 945

⁵⁸⁵ Milej p. 947

⁵⁸⁶ Milej p. 947

⁵⁸⁷ https://normas.mercosur.int/simfiles/normativas/71547_DEC_064-2010_ES_Estatuto%20de%20Ciudadania_Actualizada.pdf

⁵⁸⁸ <https://www.mercosur.int/quienes-somos/paises-del-mercosur/>

Kingdom and the Republic of Ireland, Australia and New Zealand, Russia and Belarus. There are other bilateral and regional multilateral agreements that do not create a zone of free movement but facilitate the entry of certain target groups, such as business persons, for example under the North Atlantic Free Trade Agreement (NAFTA)⁵⁸⁹.

Provided that there is an economic interest at play, certain states are more than happy to facilitate cross-border migration, permanent settlement and even the removal of physical borders and check-points, should it be required. One may argue that the international community is hypocritical. However, as it was shown in the previous chapter, understanding the national interests of the affected sovereign states may yield solutions to a refugee crisis, such as in the case of Haitian asylum-seekers in 2010 moving to Brazil for example. Recognizing the various interests of the key stakeholders, the international community is increasing willing to cooperate on an international level to create a global governance on migration and asylum. Also, reinforcing that human mobility is highly dependent on local development policies, such analysis provides an opportunity to focus on prevention.

5.6. GLOBAL COMPACTS ON HUMAN MOBILITY

International cooperation in the field of migration law thusfar took various forms ranging from dialogue and sharing information, experiences and best practices, to cooperation in policy development and operational implementation. The management of human mobility is a sovereign right and responsibility of states, consequently, migration policies have traditionally been developed at the national level⁵⁹⁰, with a focus on national (state) security, rather than operating within the realm of the human security paradigm, as referenced in an earlier chapter. At this stage of development of International Human Mobility Law (IHML), the relevance to “environmental refugees” within these mechanisms is not emphasized much – neither in politics, nor in research. Although Fischer describes a definitely noticeable spill-over effect, whereby humanitarian activism spilled over to other issues such as environmental deterioration⁵⁹¹ ever since the international community realized that environmental pollution is borderless. Coupled by now with the slow acknowledgement of the adverse effects of anthropogenic climate change, this culminated in the current, mainstream global environmental and climate movements. Moreover, with the introduction of the Sustainable Development agenda, first proclaimed by the Limits of Growth report commissioned by the Club

⁵⁸⁹ NAFTA Art. 1603 (1) <http://www.sice.oas.org/trade/nafta/chap-161.asp#A1601>

⁵⁹⁰ NIELSEN 2013, 405. Not shown in the bibliography

⁵⁹¹ FISHER 2011, 295.

of Rome in 1972, the international community started to pay more attention to the social, economic, political and interstate implications environmental deterioration may have, which require international cooperation for a resolution.

In 2001, the Swiss government initiated an intergovernmental cooperation for managing international migration on a national, regional and global level. The Berne Initiative not only started building regional capacity but also allowed for the assessment of the regional migration situation. In the initiative's final document titled International Agenda for Migration Management (IAMM) natural hazards, man-made disasters and ecological degradation are identified as causes for „population displacement”.⁵⁹² Without any legal obligations, the participating states agreed on the following: Consider “the link between natural and man-made disasters, man-made catastrophes and ecological degradation on one side and population displacement on the other in national migration policies”; promote “the need to reduce the causes and consequences of natural disasters and environmental degradation”; intensify “international cooperation and efforts among States, international organizations and other interested stakeholders to protect and improve the environment”; implement “measures to reduce the incidence and scope of natural disasters and the displacements associated with them; promote “activities to avoid serious environmental impacts of population displacement, in particular the impacts of prolonged stay”; sensitize “migrants to the importance of environmental preservation”. The IAMM also stated that: „Irregular migration results from the voluntary choices of individuals seeking better opportunities for themselves and their families as well as compulsion resulting from armed conflicts, human rights violations, environmental degradation, or severe lack of economic opportunity.”⁵⁹³

The acquis of the IAMM has also been incorporated into the International Dialogue on Migration launched by the IOM. The Dialogue has run for about 20 years now as an informal, legally non-binding consultational mechanism with a pre-set topic. The IDM has

⁵⁹² At the same time, the document also establishes that migratory processes also have an impact on our natural environment, especially in urban areas.

⁵⁹³ In 2003, Kofi Annan Secretary General of the UN at the time, initiated a core group – with Brazil, Morocco, The Phillipines, Sweden and Switzerland – and established the Global Commission on International Migration. The mandate of the global commission of 19 independent migration experts was to provide recommendations for a comprehensive and coherent, global response to international migration. After 18 months of research and reporting building on regionalism and multistakeholder approach the Global Commission submitted its final report to the UN General Assembly. Interestingly enough the only mention of the topic discussed in the present article was in the following way. As the report states: „The states of the former Soviet Union have experienced a particularly complex pattern of human mobility”, where among other types of migration patterns, „ecological migrants” are defined as „people who have been forced to move by environmental disaster”. The report also mentions that „a growing number of small farmers [in developing countries] must also cope with the problem of environmental degradation, as well as the appropriation of agricultural land by the state and private enterprise”. GCIM Report 2005.

put “environmental migration” on its agenda in 2007, and “climate change induced migration” in particular in 2011.

Meanwhile in 2013 as the result of High-Level Dialogue on International Migration and Development, the UN General Assembly issued a declaration⁵⁹⁴ which stated that states should: „recognize that international migration is a multidimensional reality of major relevance for the development of origin, transit and destination countries, and in this regard recognize that international migration is a crosscutting phenomenon that should be addressed in a coherent, comprehensive and balanced manner, integrating development with due regard for social, economic and environmental dimensions and respecting human rights”; and „recognize the need to consider the role that environmental factors may play in migration;” Following this in 2016, 193 states declared at the UN General Assembly that it is absolutely necessary for the international community to regulate human mobility globally and comprehensively and so in Annex 2 of the New York Declaration on Migrants and Refugees a new intergovernmental consultation process was recommended. The process ended on the 10th of December, 2018 and the UN General Assembly approved the Global Compact for Safe, Orderly and Regular Migration on the 19th of December. The Global Compact identified 23 objectives, two of which specifically deals with the topic of the present paper: „Objective 2⁵⁹⁵: Minimize the adverse drivers and structural factors that compel people to leave their country of origin: Natural disasters, the adverse effects of climate change, and environmental degradation; and Objective 5⁵⁹⁶: Enhance availability and flexibility of pathways for regular

⁵⁹⁴ Inter-Parliamentary Union Handbook 2015, 189 and 191.

⁵⁹⁵ „Strengthen joint analysis and sharing of information to better map, understand, predict and address migration movements, such as those that may result from sudden-onset and slow-onset natural disasters, the adverse effects of climate change, environmental degradation, as well as other precarious situations, while ensuring effective respect for and protection and fulfilment of the human rights of all migrants; Develop adaptation and resilience strategies to sudden-onset and slow-onset natural disasters, the adverse effects of climate change, and environmental degradation, such as desertification, land degradation, drought and sea level rise, taking into account the potential implications for migration, while recognizing that adaptation in the country of origin is a priority; Integrate displacement considerations into disaster preparedness strategies and promote cooperation with neighbouring and other relevant countries to prepare for early warning, contingency planning, stockpiling, coordination mechanisms, evacuation planning, reception and assistance arrangements, and public information; Harmonize and develop approaches and mechanisms at the subregional and regional levels to address the vulnerabilities of persons affected by sudden-onset and slow-onset natural disasters, by ensuring that they have access to humanitarian assistance that meets their essential needs with full respect for their rights wherever they are, and by promoting sustainable outcomes that increase resilience and self-reliance, taking into account the capacities of all countries involved; Develop coherent approaches to address the challenges of migration movements in the context of sudden-onset and slow-onset natural disasters, including by taking into consideration relevant recommendations from consultative processes, such as the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, and the Platform on Disaster Displacement.” Global Compact for Migration 2018, p.8

⁵⁹⁶ „Cooperate to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin owing to slow-onset natural disasters, the adverse effects of climate change, and environmental degradation, such as desertification, land degradation, drought and sea level rise, including by devising planned

migration. At the same time the Global Compact on Refugees was also adopted by the General Assembly, which only incorporates two explicit sentences on environmentally and climate change induced human mobility: “While not in themselves causes of refugee movements, climate, environmental degradation and natural disasters increasingly interact with the drivers of refugee movements. In the first instance, addressing root causes is the responsibility of countries at the origin of refugee movements. However, averting and resolving large refugee situations are also matters of serious concern to the international community as a whole, requiring early efforts to address their drivers and triggers, as well as improved cooperation among political, humanitarian, development and peace actors”.⁵⁹⁷

In the process described above, climate change, environmental degradation, natural disasters are all mentioned to some extent, and usually it is why a specific document raises one specific issue but not the other. Nevertheless, there are processes which focus on the climate change – migration nexus specifically. By now, both the UN and the World Bank recognise „migration” as a means of adaptation to climate change.⁵⁹⁸ According to the IPCC, involuntary migration may be driven by the following factors: loss of housing (because of river or sea flooding or mudslides); loss of living resources (like water, energy and food supply or employment affected by climate change); loss of social and cultural resources (loss of cultural properties, neighbourhood or community networks, particularly in the case of a devastating flood).⁵⁹⁹ Climate change could translate into migration of impoverished people from rural to urban areas (in particular but not limited to developing countries), from coastal lowlands (particularly densely inhabited delta areas) to inland areas, and possibly across national boundaries. The most vulnerable populations are those exposed to natural hazards.⁶⁰⁰ The Cancun Climate Change Adaptation Framework (within the UNFCCC) identified three forms of movement: a) displacement, understood as primarily forced movement of persons; b) migration, understood as the primarily voluntary movement of persons; and c) planned relocation, understood as planned process of settling persons or groups of persons to a new location.⁶⁰¹ Such displacement can occur a) within a country (internal displacement), or b) across international borders (cross-border displacement).⁶⁰²

relocation and visa options, in cases where adaptation in or return to their country of origin is not possible”. Global Compact for Migration 2018, p.11

⁵⁹⁷ United Nations: Global Compact on Refugees, New York, 2018 p. 4

⁵⁹⁸ OBER 2014, 4.

⁵⁹⁹ IPCC (Working Group II) 2023 p.52

⁶⁰⁰ IPCC (Working Group II) 2023 p.52

⁶⁰¹ Protection Agenda 2015, 17.

⁶⁰² idem

Building on the Cancun Framework, the Nansen Initiative was launched as a state-led, bottom-up consultative process intended to identify effective practices and build consensus on fundamental principles to address the protection and assistance needs of persons displaced across borders in the context of disasters, including climate change. The Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (the Protection Agenda) consolidated the outcomes of a series of regional intergovernmental consultations and civil society meetings.⁶⁰³ The Protection Agenda introduced a new definition. The term „disaster displacement” refers to situations where people are forced or obliged to leave their homes or places of habitual residence as a result of a disaster or in order to avoid the impact of an immediate and foreseeable natural hazard. Disaster displacement is a multi-causal phenomenon, where population growth, underdevelopment, weak governance, armed conflict, violence, poor urban planning in rapidly expanding cities as well as climate change, natural hazards and environmental degradation, all come into play. Such displacement results from the fact that affected persons are exposed to a natural hazards in a situation where they are too vulnerable and lack the resilience to withstand the impacts of that hazard.⁶⁰⁴ Most of the disaster displacement takes place within the borders of a country, however some displaced persons do cross borders to seek safety, protection and assistance (hence refuge). The Nansen Initiative identified around 50 countries which have received or refrained from returning people in the aftermath of disasters, in particular those caused by natural hazards.⁶⁰⁵

According to the Protection Agenda, persons who have moved across international borders in disaster contexts are protected by human rights law, and where applicable, refugee law. However, the Protection Agenda reaffirms that international law does not address admission, access to basic services during temporary or permanent stay, and conditions for return. Only a few states have national or bilateral or (sub-)regional agreements that address these issues but the vast majority of countries lack any such normative framework⁶⁰⁶ and states not only act individually – without any international coordination in practice – but relevant institutions and operational responses revealed a general lack of preparedness leading to ad hoc responses in most cases.⁶⁰⁷ As cited above, the World Bank has stated before that the international community still lacks the legal institutions and processes to address the

⁶⁰³ *ibid*, 15.

⁶⁰⁴ *Ibid*, 16.

⁶⁰⁵ Protection Agenda 2015, 16.

⁶⁰⁶ *Ibid.*, 18.

⁶⁰⁷ *Idem*.

needs of the affected populations. Nonetheless, disaster displacement law conceptualizes a comprehensive approach to cross-border disaster displacement, which covers (a) the protection of cross-border disaster-displaced persons, as well as internally displaced persons, (b) measures to manage disaster displacement risks in the country of origin, such as preventing displacement, and (c) helping people to stay, or when movement is unavoidable, to allow people to move away from the danger from areas facing high levels of disaster risk.⁶⁰⁸

In an attempt to summarize the outcomes and the legal acquis of these processes, the IOM distilled two working definitions and referred to these people as “environmentally displaced persons” and “environmental migrants”. Building on the definition of “internally displaced person” formulated in the Guiding Principles on Internal Displacement by the UNHCR and the IDMC, an environmentally displaced person is a person who is displaced within their country of habitual residence or who has crossed an international border and for whom environmental degradation, deterioration or destruction is a major cause of their displacement, although not necessarily the sole one.⁶⁰⁹ This term must be distinguished from the European Migration Network’s definition of „environmentally displaced person”, which simply refers to „a person subject to forced migration as a result of sudden, drastic environmental changes”.⁶¹⁰ The other term defined by IOM is „environmental migrant” referring to „persons or groups of persons who, predominantly for reasons of sudden or progressive change in the environment that adversely affects their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad”. According to IOM this term is used as a less controversial alternative to „environmental refugee” or „climate refugee” that have no legal basis in international law, to refer to a category of environmental migrants whose movement is of a clearly forced nature.⁶¹¹

It can be established from all of the processes introduced above, that there is no single definition or description even for the phenomenon that is currently referred to as the issue of climate or environmental refugees. The definitions of put forward by the UNHCR, IDMC and IOM are just as broad as El-Hinnawi’s definition submitted to UNEP back in the 1970s, which may prove to be difficult to apply for states within their national immigration policy, but which at least gave the mandate for UNHCR and other relevant international organisations to provide protection to people in un-regularized, vulnerable situations. Moreover,

⁶⁰⁸ Ibid., 19.

⁶⁰⁹ IOM MECLEP Glossary 2014, 13.

⁶¹⁰ EMN Asylum and Migration Glossary 6.0. 2018.

⁶¹¹ IOM MECLEP Glossary, 13.

international cooperation will most certainly contribute to more effective national policy development, avoiding overlap and duplication and facilitating a more efficient use of resources at national, regional and international levels.⁶¹²

5.7. ACADEMIC PROPOSALS FOR A “CLIMATE REFUGEE” CONVENTIONS

It is precisely the multidimensional quality of human security that is not reflected adequately by most domestic immigration laws, which prescribe oversimplifying legal categories for the complex circumstantial situations that life on Earth produces. Throughout the 20th century with the introduction of the paradigm of human rights protection by the signature of the UN Charter, when domestic laws failed to provide protection to the affected communities, the international community stepped up and showed solidarity. When dealing with displacement in Latin-America and the Caribbean, one must assess the possible application of the following international conventions: the 1951 Convention relating to the Status of Refugees, and its 1967 Protocol relating to the Status of Refugees, the 1969 American Convention on Human rights. In addition, possible international customary law may be evidenced by the 1984 Cartagena Declaration on Refugees, although this document lacks legally binding effect. Although the Cartagena Declaration calls for the signatories to add – among other legal grounds – „other circumstances which have seriously disturbed public order”⁶¹³, which could include environmental factors, none of the regional contracting states actually enacted any relevant legislation. This eventually means that although a political declaration has been made by the countries of the American continent, it has not been backed up by state practice, therefore the assessment of the Cartagena Declaration is not a relevant source for this article.

Docherty & Gannini claim that distinction between environmental refugees and climate refugees is possible and relevant, as climate change is a worldwide phenomenon that according to the IPCC humans have influenced significantly, therefore the international community, especially developed countries bear responsibility to alleviate the situation for those who are displaced. Whereas some forms of environmental disruptions are more local.⁶¹⁴ In 2008, the OHCHR’s Deputy Commissioner of Human Rights stated that it is important to reflect on the gaps in protection, available to the vulnerable.⁶¹⁵ This spiked a race

⁶¹² NIELSEN 2013, 405.

⁶¹³ <http://www.unhcr.org/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html> (1 May, 2021)

⁶¹⁴ Bonnie Docherty and Tyler Giannini: Confronting a rising tide: A proposal for a convention on climate change refugees. Harvard Environmental Law Review, Vol. 33. p.367

⁶¹⁵ Docherty & Giannini, p.357

among academics to come up with the best proposals for addressing the ‘protection gap’. As a result, a large number and very diverse instruments were created on the issue of environmentally and/or climate change induced human mobility. Various international law scholars created their own proposals. Even the German Advisory Council on Global Change also suggested a cross-sectoral multilateral convention with regards to climate change induced human mobility.⁶¹⁶ Such was also suggested by a Resolution No. 1655/2009 and recommendation No. 1862/2009 of the Committee on Migration, Refugees and Populations together with the Committee on Environment, Agriculture and Regional Affairs of the Parliamentary Assembly of the Council of Europe. These gaps in the legal framework results in a lack of protection, lack of institutions and mandate, the need for a broad, interdisciplinary legal and policy framework.⁶¹⁷ To this end, various scholars have drafted proposals for a „climate refugee convention”.

Bierman & Boas offer a ‘blueprint for a global governance architecture for the protection and voluntary resettlement of climate refugees’ under a Protocol on Recognition, Protection, and Resettlement of Climate Refugees to the United Nations Framework Convention on Climate Change. They argue for the establishment of a *sui generis* regime for the recognition, protection, and resettlement of „climate refugees”, tailored to the needs of the persons of concern and financed and supported by the international community.⁶¹⁸ They suggest five fundamental principles for the institutional development of the regime: (1) planned re-location; (2) permanent resettlement (instead of temporary asylum); (3) collective rights for local populations; (4) international assistance for domestic measures; (5) international burden-sharing.⁶¹⁹ Within the UNFCCC framework, the authors suggest an executive committee to oversee the „climate refugee protocol” based on the example of the Montreal Protocol on Substances that Deplete the Ozone Layer, where the governing committees include an equal number of affected states and donor states with a double-weighted majority rule.⁶²⁰ The example is relevant as the Montreal Protocol is the most successful environmental convention to date. The authors also highlight the UNDP, UNEP, UNHCR and the World Bank to play a crucial to finance adaptation mechanisms, in addition to GEF, the Kyoto Protocol’s

⁶¹⁶ Biermann & Boas p.76

⁶¹⁷ Docherty & Giannini p.360

⁶¹⁸ Biermann & Boas p.75

⁶¹⁹ Biermann & Boas p.76

⁶²⁰ Biermann & Boas p.77

Clean Development Mechanism, and a Special Climate Change Fund, as well as a brand new Climate refugee Protection and Resettlement Fund.⁶²¹

In their proposal, there is no distinction made between internal and cross-border mobility, nor between slow and rapid onset effects of climate change as causes of human mobility. However, other events that are more loosely linked to climate change such as heatwaves, or human mobility caused by mitigation and adaptation measures, or from other types of environmental disasters (volcanoes, industrial accidents), and indirect consequences of climate change (such as conflict over natural resources), are all omitted. They do, however, distinguish strictly between climate change and environmental drivers of human mobility. This is problematic, since scientifically there may not be a clear distinction between pure environmental and climate change threats. This would provide states with the opportunity to distinguish between environmentally induced human mobility and climate change induced human mobility, potentially leading to discrimination. This would then lead to more categories and sub-categories of migrants, making efforts to address their vulnerability less efficient.⁶²² Finally, as Docherty & Giannini claim, it goes against the legal precedent related to refugee law, which is to use a strict term, that must be interpreted restrictively, and should not encompass any one else.⁶²³ This is reflected by state practice to only transpose the minimal refugee definition, as well as the fact for example that the UNRWA deals with Palestinian refugees separately. Overall an elaborate, well designed, meticulous draft, a true blue print from 2010 but 13 years on it is still just a blueprint.

Docherty & Giannini⁶²⁴ also promoted the establishment of a new, legally binding instrument based on human rights and shared responsibility in order to protect ‘climate change refugees’. Docherty and Gannini’s definition of „climate change refugee” covers the following six elements: (1) forced migration, (2) temporary or permanent relocation, (3) movement across national borders; (4) disruption consistent with climate change; (5) sudden or gradual environmental disruption, and (6) a „more likely than not” standard for human contribution to the disruption.⁶²⁵ Moreover, to be effective, the climate change refugee instrument should contain the following components as follows⁶²⁶:

⁶²¹ Biermann & Boas p. 79

⁶²² <https://www.e-ir.info/2021/06/24/recognition-and-protection-of-environmental-migrants-in-international-law/>

⁶²³ Docherty & Giannini p.368

⁶²⁴ Bonnie Docherty and Tyler Giannini: Confronting a rising tide: A proposal for a convention on climate change refugees. Harvard Environmental Law Review, Vol. 33. p.

⁶²⁵ Docherty & Giannini p. 372

⁶²⁶ Docherty & Giannini p.373

- a) guarantees of assistance
 - a. standards for climate change refugee status determination,
 - b. human rights protections,
 - c. humanitarian aid.
- b) shared responsibility
 - a. host state responsibility
 - b. home state responsibility
 - c. international cooperation and assistance.
- c) administration of the instrument
 - a. a global fund
 - b. a coordinating agency
 - c. a body of scientific experts. (similarly to the Subsidiary Body for Scientific and Technological advice)

Docherty & Gannini argued for a group status determinations, although most states use such tools for mass influx and emergency situations.⁶²⁷ General standard of treatment were to be the minimum standard, and proclaimed that the convention should explicitly guarantee certain rights, in a non-discriminatory way. Thus in my understanding, a specialized, inter-disciplinary convention is required.

Hodgkinson et al also proposed a separate convention for „climate change displaced persons”.⁶²⁸ Without further elaboration on the actual definition, the authors would establish obligations relating to: a) long-term resettlement for CCDPs, b) assistance based on common but differentiated responsibilities and historical greenhouse gas emissions, c) adaptation and mitigation measures by countries of origin with international financial assistance, d) establishment of global assistance fund, and e) a study about those at risk from climate change.

Meanwhile Prieur proposed a draft Convention on the International Status of Environmentally Displaced Persons. Environmental displacement understood as „forced displacement” under the Draft Convention, as „any temporary or permanent displacement made onevitable by environmental disaster, either within a State or from the State of residence to one or more receiving States, of individuals, families or populations”.⁶²⁹ The causes

⁶²⁷ Docherty & Giannini p.375

⁶²⁸ David Hodgkinson et al: Towards a Convention for Persons Displaced by Clmate Change: Key Issues and Preliminary Responses, New Critic, Scot, 2008 p.2

⁶²⁹ Draft Convention on the International Status of Environmentally Displaced Persons (May 2013, Third Version) art 2 (2.3)

of environmental „degradation” are explained with a list of examples in the Preamble, which list includes „climate change and/or the loss of biological diversity, drought, desertification, deforestation, soil erosion, epidemics, armed conflict, major infrastructure and more generally, natural and technological hazards”. This means that not only climate change but the definition of the environmental degradation is focused on climate change. The Draft Convention identifies two types of environmental disasters that can lead to environmental displacement: (1) a „sudden environmental disaster is a rapidly occurring degradation of natural and/or human origin”, while (2) a „gradual environmental disaster is a slow, progressive or planned degradation of natural and/or human origin”.⁶³⁰

Under the Draft Convention „environmentally-displaced persons are individuals, families, groups and populations confronted with a sudden or gradual environmental disaster that inexorably impacts their living conditions, resulting in their forced displacement, at the outset or throughout, from their habitual residence”.⁶³¹ The draft convention applies to both internally and externally displaced persons (i.e. cross-border)⁶³², and grants them the free choice of the region or the receiving country. The Draft Convention establishes the „right to displacement”⁶³³: „All persons, each family, each group and each population confronted by sudden or gradual environmental degradation that inexorably impacts their living conditions has the right to move within or outside of their home State. State Parties shall not in any way hinder, attempt to hinder or allow any hindrance with this displacement.” Free choice of residence on the one hand, requires the obligation to receive environmentally displaced persons by the countries of destination. Prieur references articles 9 and 12 of the ICCPR for this freedom of movement, however, as it was demonstrated, freedom of movement of an individual is currently limited by state sovereignty, as much as by conventional international law as customary international law. As Prieur puts it, in the disorder that accompanies the social disorganisation, victims should be able to conserve their free choice of residence, either in their own country, or in another.⁶³⁴ This freedom of movement does not prejudice the duration of the mobility, whether it be temporary or permanent. The Draft Convention includes individual and collective rights of people, of families and affected populations.⁶³⁵

⁶³⁰ Draft Convention art 2 (2.1) and (2.2)

⁶³¹ Draft Convention art 2 (1)

⁶³² Draft Convention art 12

⁶³³ Draft Convention art 10

⁶³⁴ Prieur p.7

⁶³⁵ Draft Convention on the International Status of Environmentally Displaced Persons (May 2013, Third Version)

Following the logic of the International Convention on the Status of Refugees of dual protection, the Draft Convention first establishes the legal status of „environmentally-displaced persons” and adds procedural provisions to be followed, ie. the circumstances of recognition and the competent authority. Then, the Draft Convention incorporates a list of rights guaranteed to displaced persons such as the right to assistance, right to water and food, right to health care, right to housing, the right to return (together with the prohibition of forced return), as well as the guarantee of all civil and political rights and certain economic, social, educational and cultural rights.⁶³⁶ Regarding the direction and distance taken by the person on the move, Prieur references the principle of proximity, meaning that those displaced remain as close as possible to their place of origin.

The issue of return and the principle of non-refoulement arises in two ways in the Draft Convention. At first, in article 7, under the notion of the „principle of non-expulsion”, the Draft Convention prescribes that the State Parties may not expel „a candidate who has the status of an environmentally displaced person”. Secondly, article 12 (8) prohibits forced return by stating „without exception the State may not oppose a displaced person’s refusal to return to his home”. Additionally, the Draft Convention would place a legal obligation to assist the voluntary return.

Immobility is also included as an option under article 11 of the Draft Convention, with the „right to refuse displacement”: „When displacement is necessary, and implemented by public authorities, it can only take place with the consent of the persons concerned, except in case of grave and imminent danger. Persons duly informed opposing their displacement do so at their own risks and peril.” Informed decision making is a requirement under the rule of law, and in order to avoid entrapment.

Finally, the Draft Convention calls for the establishment of independent and separate National Commissions on Environmental Displacement, which would consist of 9 independent „experts in the field of human rights, the environment and peace”, who „shall be appointed by the highest judicial authorities of the country”. Appeals against decisions may then be submitted to the „High Authority”.⁶³⁷ While there are countries who have separate commissions on asylum, in most states asylum cases are handled within the same organisation but probably a different department than regular immigration cases. However, in neither instances do I see the capacity, the expertise and/or the political will to establish a separate or another authority that deals exclusively with „environmentally displaced persons”.

⁶³⁶ Draft Convention art 12

⁶³⁷ Draft Convention article 18

Similarly to Biermann & Boas' Blueprint, the Draft Convention is ambitious in terms of global governance on environmentally induced human mobility. The Draft Convention envisages:

- a) a Conference of the Parties, such as the UNFCCC COPs but not the same, including observer status for NGOs,
- b) the incorporation of a „World Agency for Environmentally Displaced Persons (WAEP)”, the „World Fund for the Environmentally-Displaced (WFED)”, as well as an Executive Council of the WAEP and WFED, whose members are to be elected by the COP,
- c) and a „High Authority”, whose members are to be elected by the COP as well.⁶³⁸

Finally, national implementation reports must also be submitted by State Parties according to detailed prescription regarding the methodology.⁶³⁹ No reservations are permitted.⁶⁴⁰ Dispute settlement among State Parties is under the jurisdiction of the ICJ.⁶⁴¹

⁶³⁸ Draft Convention article 20

⁶³⁹ Draft Convention article 27

⁶⁴⁰ Draft Convention article 33

⁶⁴¹ Draft Convention article 30

CONCLUSIONS

Based on the evidence I have presented in this dissertation I draw the following conclusions. Firstly, considering the complexity of climate change and environmental degradation conceptually it is too limiting, too reductive to separate climate change induced human mobility from the broader spectrum of environmentally induced human mobility. Secondly, taking account of the multilayered driving factors of human mobility and the multidimensional vulnerability of the affected populations, including their aspirations and capabilities, environmentally induced human mobility can not be singled out as a type of human mobility to be regulated on its own terms and merits. Thus, environmentally induced human mobility must be regulated within a global legislative framework, namely international law of human mobility, which should rest upon the acquis of international refugee law and disaster law, as well as on the multilateral framework on international trade related migration, defined by the legal requirements of international human rights law. As a result of the legal gap analysis of this framework, I have identified points of intervention. Finally, considering the legal history and the institutionalisation process of the international law of human mobility, I have also concluded that as a best practice international institutions are an effective way to react to crisis situations where widespread political consensus is lagging behind. Therefore in the near future, on the short term, setting up international institutions or broadening the mandate of already existing institutions to accommodate environmentally induced human mobility is a logical option. Building on the development – migration nexus, which has been translated into the adaptation capacity – migration nexus by the IPCC, one of the long term solutions lies outside of international law of human mobility, and that is international development and global climate change adaptation mechanisms. Additionally, based on the common but differentiated responsibility of the international community and building on the global compacts for migration and refugees, a global framework on human mobility must be developed.

BIBLIOGRAPHIC REFERENCE

- Amitav Acharya (2003) Guns and butter: Why do human security and traditional security co-exist in Asia?, *Global Economic Review: Perspectives on East Asian Economies and Industries*, 32:3, 1-21
- Aderanti Adepaju, Alistair Boulton, Mariah Levin: Promoting integration through mobility: free movement and the ECOWAS Protocol, UNHCR Research Paper No 150. (New Issues in Refugee Research), 2007
- Audebert, Cedric: The recent geodynamics of Haitian migration in the Americas: refugees or economic migrants? *Revista Brasileira de Estudos de População* vol. 34. no. 1., São Paulo, Jan/Apr. 2017
- David A. Baldwin (1997): The concept of security, *Review of International Studies*, 23, 5-26
- Diane C Bates: Environmental refugees? Classifying Human Migration Caused by Environmental Change, *23 Population and environment*, 465, 468 (2002)
- Gina Bekker: The Protection of asylum seekers and refugees within the African regional human rights system, *African Human Rights Journal*, (2013) 13 AHRLJ 1-29
- Bende Zsófia – Muhoray Árpád: A környezeti migráció, mint komplex kihívás. In: *Hadtudomány (Rend- és katasztrófavédelem) 2014/3-4.*
- Thomas J. Biersteker and Cynthia Weber: The social construction of state sovereignty in Thomas J. Biersteker and Cynthia Weber (eds.) (1996): *State sovereignty as social construct*, Cambridge University Press
- Daniel Bodansky, Jutta Brunée and Lavanya Rajamani: *International Climate Change Law*, Oxford UP, 2017
- P Bourdieu 'The forms of capital' (Chapter 1), in J Richardson *Handbook of Theory and Research for the Sociology of Education* (1986), Westport, CT: Greenwood, pp. 241–258
- Christina Boswell: Addressing the causes of migratory and refugee movements: the role of the European Union, UNHCR Working Paper No 73. UNHCR, 2002
- Alan Boyle: Soft-law in international law-making IN: Malcolm D Evans (ed): *International law* (3rd edition), Oxford, 2010
- Susan C Breau: Responses by states IN: Susan C Breau – Katja LH Samuel (eds): *Research Handbook on Disasters and International Law*, Elgar Publishing, 2016
- BRONEN, R.: *Climate-induced community relocations: Creating an adaptive governance framework based in human rights doctrine*, N.Y.U. Review of Law and Social Change, (2011) 35(2): 357-362
- Robin Bronen: The human rights of community relocation In: Dimitra Manour – Andrew Baldwin – Dug Cubie – Anja Mihr – Teresa Thorp (eds.): *Climate Change, Migration and Human Rights*. Routledge, 2017
- Bruhács János: *Nemzetközi Jog II. Különös Rész*, Dialóg Campus, 2014.
- BUENO, Xiana; PRIETO-ROSAS, Victoria: Migration Theories IN: GU, Danan; DUPRE, Matthew E. (Eds) *Encyclopedia of Gerontology and Population Aging*. Springer, Cham, 2019
- Buzan, O. Waeber, J. de Wilde: *Security – A new framework for analysis*. London: Lynne Rienner Publishers, 1998. p.26
- Mely Caballero-Anthony (2015) Community security: human security at 21, *Contemporary Politics*, 21:1, 53-69,
- Kristian Cedervall Laut: Human rights and natural disasters In: Susan C Breau – Katja LH Samuel (eds): *Research Handbook on Disasters and International Law*, Elgar Publishing, 2016

Clement, Viviane, Kanta Kumari Rigaud, Alex de Sherbinin, Bryan Jones, Susana Adamo, Jacob Schewe, Nian Sadiq, and Elham Shabahat. 2021. *Groundswell Part 2: Acting on Internal Climate Migration*. Washington, DC: The World Bank

FM Deng et al. *Sovereignty as Responsibility: Conflict management in Africa*, The Brookings Institute, 1996

Joanna Depledge: *The Legal and Policy Framework of the United Nations Climate Change Regime*. IN: Daniel Klein-Maria Pia Carazo-Meinhard Doelle, Jane Bulmer, Andrew Higham (eds): *The Paris Agreement on Climate Change*, OUP, 2017. pp. 27-43

Bonnie Docherty and Tyler Giannini: *Confronting a rising tide: A proposal for a convention on climate change refugees*. *Harvard Environmental Law Review*, Vol. 33.

G.Dyer: *Climate Wars: The Fight for Survival as the World Overheats*, Oxford, Oneworld Publications, 2011.; H. Welzer: *Climate Wars: What people will be killed for in the 21st century*. Cambridge: Polity Press, 2017.

Alice Edwards and Carla Ferstman (2010): *Humanising Non-Citizens: The Convergence of Human Rights and Human Security in HUMAN SECURITY AND NON-CITIZENS: LAW, POLICY, AND INTERNATIONAL AFFAIRS*, A. Edwards and C. Ferstman, eds., Chapter 1, Cambridge University Press, 2010

Lorraine Elliott (2015) *Human security/environmental security*, *Contemporary Politics*, 21:1, 11-24 p

Joao Esteves (2018): *Migration crisis in the EU: developing a framework for analysis of national security and defence strategies*. *Comparative migration studies*, 6(1)

Esraa Adnan Fangary: *A peculiar leap in the protection of asylum seekers – the Inter-American Court of Human Rights Jurisprudence on the protection of asylum seekers* In: *The Age of Human Rights Journal*, 16 of June, 2021 https://revistaselectronicas.ujaen.es/index.php/TAHRJ/article/view/6134/5627#content/citation_reference_39

Margit Fauser (2006): *Transnational Migration – A National Security Risk? Securitization of Migration Policies in Germany, Spain and the United Kingdom*, Center for International Relations, Reports & Analyses, 2/06

P. Brian Fisher (2011): *Climate change and human security in Tuvalu*, *Global Change, Peace & Security*, 23:3, 293-313

Elisa Fornalé: *Labour mobility options as adaptation strategies to environmental changes*. In: In: Dimitra Manour – Andrew Baldwin – Dug Cubie – Anja Mihr – Teresa Thorp (eds.): *Climate Change, Migration and Human Rights*. Routledge, 2017

Sakiko Fukuda-Parr (2003) *New Threats to Human Security in the Era of Globalization*, *Journal of Human Development: A Multi-Disciplinary Journal for People-Centered Development*, 4:2, 167-179

Thomas Gammeltoft-Hansen – Ninna Nyberg Sorensen (ed): *The Migration Industry and the Commercialization of International Migration*. Routledge, New York, 2013. 302,

François Gemenne: *Why the numbers don't add up: A review of estimates and predictions of people displaced by environmental changes*, *Global Environmental Change*, Volume 21, supplement 1, 2011, pp. 41-49

Gleick, Peter: *Water, drought, climate change, and conflict in Syria*. In: *Weather, climate and society*, vol. 6 (2014) 331. o.

Glied, V., & Bumberák, M. (2011). *Klíma-vándorlás, klímaigazságosság és a globális NGO-k Afrikában*. *Afrika Tanulmányok / Hungarian Journal of African Studies*, 5(3), 4–33

Godrej, Dinyar: *A klímaváltozás*. HVG Könyvek, 2004.

- GROMILOVA, Mariya: Revisiting Planned Relocation as a Climate Change Adaptation Strategy: The Added Value of a Human Rights-Based Approach. *Utrecht Law Review*, Vol. 10, Issue 1 (January) 2014, 75. p.
- H de Haas 'A theory of migration: the aspirations-capabilities framework', *CMS* 9, 8 (2021)
- H de Haas, S Castles, M J Miller 'The Age of Migration', Bloomsbury Academic, 2020
- Hartmann, Betsy: Rethinking climate refugees and climate conflict: Rhetoric, reality and the politics of policy discourse. *Journal of International Development*, Vol 22. Issue 2 (March, 2010) pp.233-246
- Handerson, Joseph: The Haitian migratory system in the Guianas: beyond borders. *Diálogos, Maringá-PR Brasil*, v. 24. no. 2., pp. 207-209
- T. F. Homer-Dixon, Thresholds of Turmoil: Environmental Scarcities and Violent Conflict IN: DH Dudney, RA Matthew (eds.): *Contested Ground: Security and Conflict in the New Environmental Politics*: Albany SUNY Press, 1999
- Valéria Horváth: Human Insecurity – the focal point of irregular migration. In: Adrian Ivan, Cristian Gazdac, Claudiu Marian (ed.): *New Perspectives on European (In)security*. CA Publishing, Cluj-Napoca, Romania, 2020.
- Hannah Hughes: Environmental Security. In. Gabriela Kütting, Kyle Herman (eds.): *Global Environmental Politics*, Routledge, UK. 2018. pp.66-82. p.67
- Lori Hunter: Migration and Environmental Hazards. *Population and Environment*, Vol. 26, No. 4, March 2005
- Dina Ionesco, Daria Mokhnacheva, François Gemenne: *The Atlas of Environmental Migration*, Routledge, 2016.
- E S. Lee 'A Theory of Migration', *Demography*, Vol. 3, No. 1 (1966), pp. 47-57
- Walter Kalin and Hannah Entwisle Chapuisat: Displacement in the context of disasters and adverse effects of climate change IN: Susan C Breau – Katja LH Samuel (eds): *Research Handbook on Disasters and International Law*, Elgar Publishing, 2016
- CP Kelley, S Mohtadi, MA Cane, R Seager, Y Kushnir: Climate Change in the Fertile Crescent and Implications of the Recent Syrian Drought. *Proceedings of the National Academy of Sciences of the USA*, 2015. 112(11), 3241-3246
- Robert O. Keohane (2002): Ironies of Sovereignty: The European Union and the United States. IN: *Journal of Common Market Studies* 40(4) 743-65
- Tamás Kende, Boldizsár Nagy, Pál Sonnevend, László Valki 'Nemzetközi jog', Complex Kiadó, Budapest, 2014. p. 526
- James Ker-Lindsay: Climate Change and State Death. *Survival*, 58 (4)
- Khalid Koser (2005) Irregular migration, state security and human security, A paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration at https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/tp/TP5.pdf (Downloaded: 26 April, 2019)
- Kumari Rigaud, Kanta, Alex de Sherbinin, Bryan Jones, Jonas Bergmann, Viviane Clement, Kayly Ober, Jacob Schewe, Susana Adamo, Brent McCusker, Silke Heuser, and Amelia Midgley. 2018. *Groundswell: Preparing for Internal Climate Migration*. Washington, DC: The World Bank
- Asfaw Kumssa & John F. Jones (2010): Climate change and human security in Africa, *International Journal of Sustainable Development & World Ecology*, 17:6, 453-461

Silja Klepp and Johannes Herbeck: Politicising climate change adaptation. In: Dimitra Manour – Andrew Baldwin – Dug Cubie – Anja Mihr – Teresa Thorp (eds.): *Climate Change, Migration and Human Rights*. Routledge, 2017.

Sir Elihu Lauterpacht – Daniel Bethlehem: Refugee protection in international law: the scope and content of the principle of non-refoulement: Opinion In: *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (edited by Erika Feller, Volker Türk and Frances Nicholson, Cambridge University Press, 2003)

Láng István (főszerk.): *Környezet- és Természetvédelmi Lexikon I.* Akadémia Kiadó, 2002

Margesson, Rhoda & Taft-Morales, Maureen: *Haiti Earthquake: Crisis and Response*, Congressional Research Service, CRS Report R41023, 8 March, 2010

D. S. Massey, J Arango, G Hugo, A Kouaouci, A Pellegrino, J E Taylor 'Worlds in Motion. Understanding International Migration at the End of the Millenium'. Clarendon Press Oxford, 1998 pp.17-60

J. T. Matthews: Redefining Security, *Foreign Affairs*, (1989) 68(2), pp.162-177; Robert Kaplan: The Coming Anarchy in *The Atlantic Monthly*, 273 (2) 44-76

Mayer, Benoit: Critical perspective on the identification of „environmental refugees” as a category of human rights concern, In Dimitra Manour – Andrew Baldwin – Dug Cubie – Anja Mihr – Teresa Thorp (eds.): *Climate Change, Migration and Human Rights*. Routledge, 2017

MCNAMARA, K.E. - DES COMBES, H.J.: *Planning for Community Relocations Due to Climate Change in Fiji*. *International Journal of Disaster Risk Science* 6, 315–319 (2015)

Sergei Metelev: Migration as a Threat to National Security, *Indian Journal of Science and Technology*, Vol 9(14), DOI: 10.17485/ijst/2016/v9i14/91086, April 2016

Tomasz Milej: Legal Framework for Free Movement of People within Africa – A view from the East African Community, *ZaoRV* 79 (2019), 935-970

Tamás Molnár: Stateless Persons under International Law and EU Law: a Comparative Analysis Concerning their Legal Status, with Particular Attention to the Added Value of the EU Legal Order, *Acta Juridica Hungarica*, 51, No 4, pp. 293-304 (2010)

Juan Ignacio Mondelli: *Reshaping Asylum in Latin America as a Response to Large-Scale Mixed Movements: A Decade of Progress and Challenges (2009-2019)*, UNHCR Americas Bureau, 2020

Nagy Boldizsár: *A magyar menekültjog és menekültügy a rendszerváltozástól az Eruópai Unióba lépéséig*. Gondolat Kiadó, Budapest, 2012.

Kayly Ober: *Migration as adaptation – exploring mobility as a coping strategy for climate change (2014)* http://climatemigration.org.uk/wp-content/uploads/2014/02/migration_adaptation_climate.pdf

Aramide Odutayo (2016): Human security and the international refugee crisis, *Journal of Global Ethics*, 12:3, 365-379,

E Piguet 'From "Primitive Migration" to "Climate Refugees": The Curious Fate of the Natural Environment in Migration Studies', *Annals of the Association of American Geographers*, 103:1, 148-162

Sz Póczik 'A nemzetközi migráció tendenciái a 20. és 21. században elméleti és történelmi nézőpontból', in Póczik Szilveszter, Dunavölgyi Szilveszter 'Nemzetközi Migráció – Nemzetközi kockázatok', HVG Orac, Budapest, 2008 pp. 31-111

Michel Prieur: Draft convention on the International Status of Environmentally-Displaced Persons, UN-FCCC, 2010 pp.1-10

Tilma Rodenhauer and Gilles Giacca: The international humanitarian law framework for humanitarian relief during armed conflicts and complex emergencies IN: Susan C Breau – Katja LH Samuel (eds): Research Handbook on Disasters and International Law, Elgar Publishing, 2016.

Patricia Ramos, Ruth Lara, Peruvian Migration Policies - Policy and institutional frameworks, INTERACT RR 2014/08, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, 2014

Renaud, F – Bogardi, J. J. – Dun, O – Warner, K.: Environmental Degradation and Migration, Berlin Institute, 2016.

Jelena Ristik: The Right to Asylum and the Principle of Non-Refoulement Under the European Convention on Human Rights. *European Scientific Journal*, Vol. 13 No. 28.

Philippe Sands and Jacqueline Peel (eds): Principles of International Environmental Law, Cambridge, 2018

Jeanette Schade: Land matters In: Dimitra Manour – Andrew Baldwin – Dug Cubie – Anja Mihr – Teresa Thorp (eds.): Climate Change, Migration and Human Rights. Routledge, 2017.

Scott, M. (2023). Adapting to Climate-Related Human Mobility into Europe: Between the Protection Agenda and the Deterrence Paradigm, or Beyond?, *European Journal of Migration and Law*

Selby, Jan – Hoffmann, Clemens: Beyond Scarcity: Rethinking water, climate change and conflict in the Sudan. In: *Global Environmental Change* vol. 29 (2014)

Giorgio Shani (2017): Human Security as ontological security: a post-colonial approach, *Postcolonial Studies*

Simperingham, Ezekiel: State responsibility to prevent climate displacement - The importance of housing, land and property rights In: Dimitra Manour – Andrew Baldwin – Dug Cubie – Anja Mihr – Teresa Thorp (eds.): Climate Change, Migration and Human Rights. Routledge, 2017.

D Sriskandarajah ‘Migration and Development’, Global Commission on International Migration, September 2005

Tim Stephens: Disasters, international environmental law and the Anthropocene IN: Susan C Breau – Katja LH Samuel (eds): Research Handbook on Disasters and International Law, Elgar Publishing, 2016

Thorp, Theresa: Transitional law in the climate change context. In: Dimitra Manour – Andrew Baldwin – Dug Cubie – Anja Mihr – Teresa Thorp (eds.): Climate Change, Migration and Human Rights. Routledge, 2017.

Turco – Palazzi – Hardenberg – Provenzale: Observed climate change hotspots. In *Geophysical Research Letters*, April 2015.

Nikolaos Tzifakis (2011): Problematizing human security: a general/contextual conceptual approach, *Southeast European and Black Sea Studies*, 11:4, 353-368

Untawale, M. G. (1990). Global Environmental Degradation and International Organizations. *International Political Science Review*, 11(3), 371–383

Urbán Ferenc: Az afrikai kontinens migrációs sajátosságai In: Tarrósy István – Glied Viktor – Keserű Dávid: Új népvándorlás, Migráció a 21. században Afrika és Európa között, Publikon kiadó, Pécs, 2011.

Supt. Shahbudin Bin Abdul Wahab (2002): GLOBALIZATION AND ITS IMPLICATIONS ON NATIONAL SECURITY, *Journal of the Royal Malaysia Police Senior Officers' College*

Francesca Vietti (2013): Human Insecurity: Understanding International Migration from a Human Security Perspective, *Journal on Migration and Human Security*, Volume 1 Number 1 17-31,

Wilson, Jill H.: Temporary Protected Status: Overview and Current Issues, Congressional Research Service, CRS Report, 17 January, 2018

Wissink, M: The evolution of migration trajectories of sub-Saharan African migrants in Turkey and Greece: The role of changing social networks and critical events, *Geoforum* (2017)

Daniel Wolf (1988): Humanitarian Intervention, *Michigan Journal of International Law*, Vol. 9 Iss. 1

J Wolpert 'Migration as an Adjustment to Environmental Stress' *JOURNAL OF SOCIAL ISSUES* VOL. XXII, NUMBER 4, 1966

Quentin Wodon, Andrea Liverani, George Joseph, Nathalie Bougnoux: Climate change and migration The World Bank, 2014

Wooding, Bridget: L'évolution des relations entre Haiti et la République dominicaine après le séisme de 2010, *Outre-terre*, 2013 no. 35-36, pp. 251-259.

Zelinsky, Wilbur. "The Hypothesis of the Mobility Transition." *Geographical Review* 61, no. 2 (1971): 219–249.

Zetter, Roger: Protecting environmentally displaced people. Developing the capacity of legal and normative frameworks. In: Research Report, Refugee Studies Centre, Oxford Department of International Development, University of Oxford. February 2011.

Conventions

Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (Lugano, 21.VI.1993)

Reports

IPCC Working Group II: Climate Change: The IPCC Impact Assessment No. 1. (1990)

IPCC Working Group III: Climate Change: The IPCC Response Strategies (1990). (Elérhető: https://www.ipcc.ch/site/assets/uploads/2018/03/ipcc_far_wg_III_full_report.pdf Letöltés ideje: 2019. december 15.; a továbbiakban: IPCC Response Strategies (1990))

UNHCR: A világ menekültjeinek helyzete – A humanitárius segítségnyújtás öt évtizede, UNHCR Magyarországi Képviselete, Budapest, 2000

The World Bank: Natural Disaster Hotspots: A Global Risk Analysis, 2005. 15. o. (Elérhető: <http://documents.worldbank.org/curated/en/621711468175150317/Natural-disaster-hotspots-A-global-risk-analysis> Letöltés ideje: 2019. december 15.)

UNCCD: Climate Change and Desertification, June 2007. (Elérhető: https://www.unccd.int/sites/default/files/relevant-links/2017-01/Desertificationandclimatechange_0.pdf (Letöltés ideje: 2019. december 15.)

Planting Now: Agricultural challenges and opportunities for Haiti's reconstruction, Oxfam Briefing Paper, October 2010 (https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/file_attachments/bp140-planting-now-agriculture-haiti-051010-en_0_4.pdf (2020. december 7.))

Asian Development Bank (ADB): A Region at Risk, The human dimensions of climate change in Asia and the Pacific. 2017. (<https://www.adb.org/sites/default/files/publication/325251/region-risk-climate-change.pdf> Letöltve: 2020.11.28.)

IDMC: No matter of choice: displacement in a changing climate. December 2018

IOM: Migration as an Adaptation Strategy to Climate Change (Elérhető: <https://weblog.iom.int/migration-adaptation-strategy-climate-change>)

WMO: Drought and heat exacerbate wildfires, 30 July 2018. (Elérhető: <https://public.wmo.int/en/media/news/drought-and-heat-exacerbate-wildfires>)

IFRC World Disaster Report (2018) (Elérhető: <https://www.ifrc.org/sites/default/files/2021-09/B-WDR-2018-EN-LR.pdf>)

Environmental Justice Foundation: Climate Displacement in Bangladesh (Elérhető: <https://ejfoundation.org/reports/climate-displacement-in-bangladesh> Letöltés ideje: 2019. december 15.)

WHO: Climate change and human health - Information and public health advice: heat and health (Elérhető: <https://www.who.int/globalchange/publications/heat-and-health/en/> Letöltés ideje: 2019. december 15.)

FAO: Drought (Elérhető: <http://www.fao.org/land-water/water/drought/en/> Letöltés ideje: 2019. december 15.)

FAO-IFAD-IIOM_WFP: The linkages between migration, agriculture, food security and rural development. rome. (<http://www.fao.org/3/ca0922en/ca0922en.pdf> letöltve 2021.05.16.)

The Climate and Migration Coalition: Climate and Migration (Available at <http://climatemigration.org.uk/> Downloaded: 07.05.2020.)

News articles

Azadeh Ansari: 'Climate change' forces Eskimos to abandon village, CNN online, April 28, 2009 <http://edition.cnn.com/2009/TECH/science/04/24/climate.change.eskimos/index.html> (Letöltés ideje: 2019. december 13.)

Rachel Waldholz: Alaskan Village, Citing Climate Change, seeks Disaster Relief In Order to Relocate, NPR online, January 10, 2017 <https://www.npr.org/2017/01/10/509176361/alaskan-village-citing-climate-change-seeks-disaster-relief-in-order-to-relocate?t=1576268222760>

Saber Salem: Climate Change and the sinking island states in the Pacific, 2020. (<https://www.e-ir.info/2020/01/09/climate-change-and-the-sinking-island-states-in-the-pacific/> Letöltve: 2020.12.15.)