

Disclaimer: This is a simulated table-top exercise. It is not intended to—and does not—reflect the views of any individual or organisation.

UNFCCC (COP 22) – Interim Report of the Adaptation Committee

Development of legal norms for the protection of environmentally displaced persons

As part of the Cancun Adaptation Framework, States Parties established the Adaptation Committee at the 16th Conference of States Parties in Cancun, Mexico in 2010 (COP16). The mandate of the Committee is to promote the implementation of enhanced action on adaptation in a coherent manner under the Convention through, *inter alia*, providing information and recommendations for consideration by the COP when providing guidance on means to incentivise the implementation of adaptation actions.

At COP 21, the Adaptation Committee was tasked with examining the issue of environmental displacement in the overall context of the UNFCCC's adaptation efforts. Specifically, the Committee was asked to analyse the various legal approaches to human migration and displacement caused by anthropogenic changes in the environment. The Committee adopted a programme of work, solicited the views of leading scholars and practitioners, called for submissions from key international organisations, and held several consultations to fully address options for the development of the law in this area.

The outcome of this intensive programme of work was the interim report—*which you have just heard*. The Adaptation Committee, before issuing its final report and recommendations, is seeking the guidance of the Conference of States Parties on the following options:

1. **Amend the Refugee Convention.** Should the 1951 Refugee Convention and its 1967 Protocol be amended (or a new Protocol adopted thereto) to include protections for persons who are environmentally displaced?
2. **Adopt a new convention.** Should an international conference be convened to draft, negotiate, and conclude a new multilateral instrument for the protection of environmentally displaced persons?
3. **Enhance national laws.** Since most of the forthcoming displacement is predicted to be within national boundaries, should States simply reassess and reinforce, as necessary and appropriate, their domestic legislation in order to cope with an increase in the number of environmentally displaced persons?
4. **Develop Guiding Principles.** Should a non-binding set of Guiding Principles (soft law) be developed to guide domestic, regional, and international policies in this area?
5. **Increase adaptive capacity.** Should States continue—through the framework provided by paragraph 14(f) of the Cancun Adaptation Framework—to develop measures to enhance understanding, coordination, and cooperation on climate changed-induced displacement, migration, and planned relocation?

States Parties and NGOs are requested to consider all of the foregoing options, choose the best one, and briefly explain the reasons (3–5 minutes). After each group has given its view, there will be a general debate (time permitting).

Disclaimer: This is a simulated table-top exercise. It is not intended to—and does not—reflect the views of any individual or organisation.

African States

Africa is the leader in the area of environmental displacement, with the Kampala Convention. Moreover, the UNCCD's Regional Implementation Annex for Africa (Annex I) specifically addresses environmental displacement and highlights, as a priority area, early warning systems and joint planning for mitigating the effects of drought, including measures to address the problems resulting from environmentally induced migrations (Annex I, Article 11). African States are obligated to incorporate their obligations under the Kampala Convention into their domestic law (Article 3(2)(a)) and to take meaningful action under the UNCCD. But this requires funding, and this funding should come from the Developed States. In this regard, **the Cancun Adaptation Framework Agreement's paragraph 14(f) is a solid international institutional framework that can—and should—justify serious and comprehensive scientific studies of environmental displacement in Africa. After an appropriate amount of time and study, action then needs to be taken to identify current crises and rectify them.** Finally, the next humanitarian crisis needs to be identified and *prevented* before it happens.

The 1951 Refugee Convention is not a useful solution because it does not deal with the root causes of environmental displacement, which will only get worse in the coming decades. Rather than expending energy to amend the Refugee Convention, the international community should focus on a more inter-disciplinary approach that encompasses both protection and prevention. In any case, a rights-based approach to the problem is not appropriate because entire communities will be affected. The “every man for himself” approach is therefore inhumane and will not work.

A new convention is not needed in the African context because the Kampala Convention filled any normative or conceptual gaps in the legal framework regarding people who are displaced due to environmental changes, whether those changes are sudden onset disasters or slow onset ones. A new convention could also divert attention and scarce resources away from the implementation of the existing legal frameworks (Kampala Convention), thus robbing displaced persons from the protection they require.

In fashioning solutions, new guiding principles can be helpful, such as the Nansen Principles. With foresight, commitment, science, and dedicated resources, progress can be made.

Disclaimer: This is a simulated table-top exercise. It is not intended to—and does not—reflect the views of any individual or organisation.

Asia-Pacific States (includes Japan and China)

First and foremost, the Group must make it clear that it will not accept any proposals that erode State sovereignty. Moreover, Article 2(7) of the UN Charter clearly enshrines the principle that the UN is not to intervene in matters that are essentially within the domestic jurisdiction of any State. Most of the displacement that will be caused by environmental degradation will be within national boundaries. Therefore, **this aspect of the problem and the sacrosanct principle of state sovereignty militate heavily in favour of solutions being left to States to deal with on a case-by-case basis and according to their national law.**

The Refugee Convention was not meant to be applied to environmental refugees. Furthermore, the Convention is already an instrument that is stretched beyond its breaking point now that it has been extended beyond Europe (1967 Protocol) and with the huge influxes of refugees from the Middle East to Europe. No more can be asked of the Refugee Convention.

The development of guiding principles may be useful, but only on the understanding that they are non-binding, as is currently the case with the Guiding Principles on Internal Displacement. In any case, the Guiding Principles already cover IDPs, so the need for more guiding principles for environmental displacement is less than clear.

The international community's attention to this problem of environmental displacement is in its beginning stages. Further study and research is needed; and, this is the reason the Group supported the Cancun Adaptation Framework and is currently devoting funds to the enhanced study of human migration over the coming decades.

The devotion of scarce resources to the development of a new convention would divert attention away from the critical research that is needed in this area. A new convention may also erode State sovereignty. In any case, since the research in this area is in its infancy and the problem has not even been fully studied or understood yet, the international community would not even know what to put into such a convention.

Disclaimer: This is a simulated table-top exercise. It is not intended to—and does not—reflect the views of any individual or organisation.

Western European and Other States (WEOG) (including USA, Australia, Canada)

The Group is committed to helping on a regional and international level in coping with the predicted increase in the number of persons who are displaced, both internally and across national boundaries. However, in applying the principle of Common But Differentiated Responsibility, the Group cannot accept any measures that assign blame and liability to any State on the basis of historical emissions. **The Developed States have undertaken, in paragraph 14(f) the Cancun Adaptation Framework, to develop measures to enhance understanding, coordination, and cooperation on climate changed induced displacement, migration, and planned relocation. And millions of euros have been earmarked over the next decades to fund these efforts to increase the adaptive capacity of States to cope with the coming influx of environmentally displaced persons. This adaptive approach to strengthening the international community’s resilience to increased human migration is more practical than a rights-based approach of “every man for himself” under a new convention.**

Thinking along the lines of an amendment to the Refugee Convention is antiquated. That instrument is a creature of a past age that no longer exists. Moreover, the drafters never envisaged that it would be applied in the context of the present challenges facing the international community. Tampering with the Refugee Convention could also re-open the delicately negotiated compromises that went into that legal instrument so many years ago and upon which so many refugees depend for protection today.

A new convention is also a non-starter. Conventions are complex documents by which States assume obligations to take certain actions and to refrain from others. Such a rights-based approach will not work in the context of environmental migration, where hundreds of millions are expected to be displaced. A new convention would be too general and monolithic for the detailed and long-term strategies that are needed to tackle this new problem, which we do not even fully understand yet. Scientists are still struggling to define the very nature of the problem, and so any new convention could end up being obsolete before it even enters into force. It is doubtful that any new convention, which will be a negotiated compromise, will be able to reflect the many different causes of human migration in the context of climate change.

The Group is not opposed to the development of Guiding Principles in this area, such as the Nansen Principles, but caution has to be exercised to prevent such principles from being carved in stone and then becoming obsolete as scientific and world events continue to shift.

In this regard, national legislation is perhaps a better approach than guiding principles. National laws are often easier to adapt to changing circumstances and scientific advances than international legal norms. Moreover, since most of the forthcoming displacement is predicted to be within national boundaries, States can fashion their laws to cope with an increase in the number of environmentally displaced persons.

Disclaimer: This is a simulated table-top exercise. It is not intended to—and does not—reflect the views of any individual or organisation.

Small Island Developing States (SIDS)

The possibility of amending the Refugee Convention is the best way to ensure that the millions of people whose country will be submerged in the coming decades will be protected. The Refugee Convention was a visionary watershed moment in modern human history, whereby the nations of the world—which had just emerged from two world wars that caused tens of millions of refugees—banded together to ensure that these refugees would be protected. We are approaching yet another of these watershed moments, whereby tens of millions of people will again be displaced from not only their homes, but also their countries—which may even cease to exist. We have never faced such a serious and game-changing event, and the situation requires bold and far-reaching action.

The Group realises that the Developed Countries are reluctant to accept responsibility for climate change. It is also understandable that the Developed Countries do not want to incur liability for the millions of people who will require new homes (and perhaps new nationalities) in the coming decades. But the mass migrations are coming whether we like it or not.

A new legal instrument is another way to convince States to take the situation with the requisite level of gravity.

Adaptive measures under paragraph 14(f) of the Cancun Framework will take too long, and it is not certain that the Developed Countries will adequately fund them.

Domestic legislation is also not a solution, because States are subject to their domestic constituencies who are eternally prone to a NIMBY mentality.

Regional and bilateral instruments may help the situation on a limited basis, but they will also give rise to an unequal application of protections based on the regions and States involved. Such efforts could give rise to protection in some regions, but not others. Such an uneven application could result in the fragmentation of the law in this area. This approach could also lead to “region shopping” whereby environmental refugees could overload a region that provides more protection to them, while regions providing little to no protection would benefit according to the “free rider” principle.

The development of further soft law in this area (such as the Guiding Principles) is of no assistance, because it would not be binding on States. The time for action is now. Such non-binding measures could even provide States with a palliative solution and delay meaningful action from being taken.

Disclaimer: This is a simulated table-top exercise. It is not intended to—and does not—reflect the views of any individual or organisation.

Non-Governmental Organisations with Consultative Status

No proposals or options should be ruled out at this point. The international community has been trying to understand and identify the problems relating to human migration due to anthropogenic factors and new thinking is needed to adequately address this new problem.

Why not amend the Refugee Convention? Even if the current definition of a refugee under the Convention does not encompass an individual displaced due to land degradation, the Convention is a shining example of the international community coming together to create binding legal obligations to protect classes of persons who are in the most urgent need. It is a fair and successful model for people who have been displaced due to persecution, torture, and armed conflict—and it can now be extended to a new set of circumstances.

A new convention is also a good idea. Of course such an instrument cannot come about overnight, but the very process of negotiating and drafting such a multilateral instrument will focus the attention of the countries of the world on this problem in a way that policy debates just cannot. People who are displaced due to climate change are in need of help just as much as those fleeing persecution.

There is also no reason not to encourage States into relaxing their national laws in order to allow environmental refugees to seek shelter within their national borders. And such protection should not be of a temporary nature. Huge swathes of territory in Canada and Russia will become available due to global warming; and, this territory, which is now unoccupied tundra, could become new flourishing homes for entire populations from the Small Island Developing States. Bilateral and regional agreements could be the best practical solutions for the mass influxes of environmental refugees in the coming decades.

For States that are concerned about the foregoing proposal, the development of guiding principles, as non-binding soft law, can guide domestic, regional, and international policies in this area. Coordination among nations will be of crucial importance in dealing with this problem, and such principles could assist in these coordination efforts.

Through the framework provided by paragraph 14(f) of the Cancun Adaptation Framework, States should continue to develop measures to enhance understanding, coordination, and cooperation on climate change induced displacement, migration, and planned relocation. This Framework is crucial for motivating states to devote financial resources to further scientific study, so durable, fact-based options can be fashioned to identify and prevent situations from turning into crises.

All of these proposals can work together, and need not be in opposition to each other. The coming migrations will be the greatest challenge that our species has ever faced, and everyone will be affected. We therefore must pull together, work collectively, and find new solutions.