

*Caux Dialogue on Land and Security (4th annual)*

# Addressing Conceptual Legal Gaps in the Context of Environmental Displacement

*“[C]limate change will become the biggest driver of population displacements, both inside and across national borders, within the not too distant future.”*

– United Nations High Commissioner for Refugees (2009)

# Overview

## Section 1

**Typology of the Drivers of Environmental Displacement**

## Section 2

**Rights-Based Approaches to Managing Environmental Displacement**

## Section 3

**Shifting from a Rights-Based Approach to an Adaptive Approach**

# *Section 1 – Typology of the Drivers of Environmental Displacement*

## Inter-Governmental Panel on Climate Change (IPCC) *Fifth Assessment Report of IPCC (2014)*

- concluded that climate change over the 21<sup>st</sup> Century is projected to increase the displacement of people



Most accepted estimate is 200 million environmental migrants by 2050 – or one in every 45 people

# Inter-Agency Standing Committee (IASC) *Working Group on Migration/Displacement and Climate Change*

- Hydro-meteorological extreme hazard events
- Environmental degradation and/or slow onset extreme hazard events
- Significant permanent losses in state territory as a result of sea level rise
- Armed conflict/violence over shrinking natural resources

# *Section 2 – Rights-Based Approaches to Managing Environmental Displacement*

## 1951 Refugee Convention

- Generally concerned with the protection of refugees in Europe following World War II
- Definition of “refugee” – Art. 1(A)(2)

## UNHCR

- Convention does not apply to persons displaced by climate change
- Does not support a new convention



## Guiding Principles on Internal Displacement (1998)

- IDPs – persons “who have been forced or obliged to flee or to leave their homes or places of habitual residence [...] and who have not crossed an internationally recognised state border”
- Potentially important legal instrument because most environmental displacement is predicted to take place within national borders
- UNHCR – takes the view that internally displaced persons are protected by international humanitarian law and human rights law, as reflected in the Guiding Principles
- However, Guiding Principles are not binding on states (called “soft law”)

# Regional and National Legislation

## Temporary protection status (TPS) (Immigration and Nationality Act: Act 244.1, 8 U.S.C. 1254) in the United States

- Serious environmental disaster temporarily prevents the return of the foreign nationals
- State affected by the environmental disaster is unable to adequately handle the return of those nationals
- Affected state makes a formal request to the US

### Limitations

- cause of displacement must be only temporary
- affected state must be unable to handle the situation
- there must be a formal request



# European Union

## EU Qualification Directive (2004/83/EC) – Limitations

- only partial protection – where there are parts of the affected country in which a person can receive protection, a person cannot request international protection
- only applies to “serious harm” due to persecution, torture, and armed conflict

## Temporary Protection Directive (Directive 2001/55/EC)

### **Limitations**

- only for mass influx (not individuals)
- political determination is made by the Council on a Proposal of the Commission
- protection is only temporary and is awarded only in exceptional cases

# European National Law

**Some EU States have national legislation that includes express protection provisions to protect persons displaced due to environmental disasters**

## Limitations

- is only temporary (maximum three years);
- can only be granted after a person has already been granted refugee status on the basis of a fear of persecution; and/or
- is only for sudden onset disasters, rather than slow onset ones

# African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa – Kampala Convention (2009)

*“States Parties shall take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change” –*  
**Article 5(4)**

**Good legal framework for regional action, *provided that* states implement it**

# Stateless Persons

## Convention Relating to the Status of Stateless Persons (1954)

- “Stateless person” is defined as “a person who is not considered as a national by any State under the operation of its law” – **Article 1**
- Not likely to apply to environmentally displaced persons because they will indeed have a nationality

# Migrant Workers

## International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

### Limitations

- only 48 ratifications – North America, Brazil, European countries not party (except BiH)
- only applies to people who are remunerated
- states do not have to grant entry
- no right to stay



# *Section 3 – Shifting from a Rights-Based Approach to an Adaptive Approach*

## United Nations Convention to Combat Desertification (UNCCD) (1994)

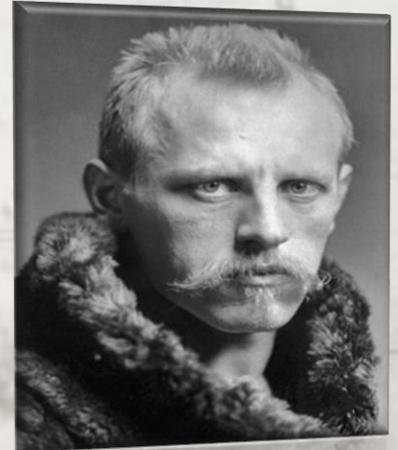
### States recognised:

- the link between land degradation and environmental migration – **Article 10, paragraph 3(a)**
- the need for early warning systems and assistance mechanisms – **Article 10, paragraph 3(a); Annex I, Article 11(f)**
- the value of regional and sub-regional approach – **Annex I, Article 11(f)**

**Action programmes are required to take these issues into account**

# Nansen Initiative Protection Agenda (2015)

- Tentative first step towards international policy-making in this field
- Consolidates effective practices by States and regional and sub-regional organisations and presents policy options:
  - ✓ preventing people from being displaced in the first place
  - ✓ helping people move in a safe, regular, and planned manner before disasters make forced movements inevitable
  - ✓ providing protection when displacement cannot be avoided and people are forced to move
- Combines mitigation, adaption, and protection



# United Nations Framework Convention on Climate Change (UNFCCC)



**States Parties were invited**

***“to enhance action on adaptation under the Cancun Adaptation Framework (2010), taking into account their common but differentiated responsibilities and respective capabilities, and specific national and regional development priorities, objectives and circumstances, by undertaking, inter alia, ... Measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels” – paragraph 14(f)***

# United Nations Framework Convention on Climate Change (UNFCCC)



- First time the COP has agreed on a text regarding migration, displacement, and planned relocation
- Intention of states was to place the issue in the context of cooperation and nationally driven adaptation, rather than blame and liability
- Aim is to cultivate “climate foresight” through stable trajectories for societal transformations over a long-term time horizon
- Qualifies research, projects, and initiatives for funding through the UNFCCC – important due to the amount of research that needs to be done

# Transformational Adaptation Strategies

- The gaps in the law and the lack of appetite for a new convention has given impetus to the adaptive approach – as opposed to the rights-based approach
- Requires ***new thinking*** and new research to analyse the issue and to create ***transformational adaptation strategies***
- Guiding Principles Around Climate Induced Displacement may help in the short to mid-term
- New UN Agency to coordinate work in this area?



***Thank You for Your Kind Attention!***

**Your assistance with a simulated exercise is now requested.**

**UNFCCC Conference of States Parties (COP 22)**

**Interim Report of the Adaptation Committee**

**Agenda Item:**

***Development of legal norms for the protection of environmentally  
displaced persons***