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Environmental-Induced Migration: Gaps and Challenges in the Current Legal System of International Protection

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ABSTRACT

L'ambiente è sempre stato un fattore che ha influenzato spostamenti e migrazioni. Tuttavia, recentemente, sono stati registrati in maniera sempre più evidente casi di spostamenti e migrazioni dovuti ai disastri ambientali, i quali sembrano tendere ad aggravarsi. La questione ambientale non è un fenomeno a sé stante; al contrario, interagisce e influenza le preesistenti condizioni socioeconomiche e politiche non solo delle nazioni più colpite, ma di tutto il mondo. Ciononostante, sono molteplici i casi di migrazione indotta dall'ambiente che non hanno trovato disposizioni giuridiche adeguate nella gestione dei flussi migratori e nel riconoscimento del diritto alla protezione internazionale. Pertanto, l'obiettivo che si propone questo lavoro è quello di individuare le lacune e le sfide nell'attuale sistema giuridico di protezione internazionale, al fine di proporre possibili soluzioni giuridiche - e non - in grado di colmare l'attuale vuoto giuridico. Lo stimolo ad intraprendere tale ricerca deriva dalla pura convinzione che è possibile trovare una soluzione comune ad un male comune. Infatti, seppur in misura diversa, la migrazione indotta dall'ambiente è un fenomeno ad influenza globale che, manifestandosi sotto diverse sfaccettature, richiede una responsabilità globale. Perciò, come verrà dimostrato, sarà essenziale un alto livello di cooperazione tra gli attori del sistema internazionale.

Offrendo un'attenta analisi del vigente sistema giuridico di protezione internazionale, che si basa primariamente sulla Convenzione Relativa allo Statuto dei Rifugiati del 1951 e in assenza di un riferimento specifico all'elemento naturale, si è arrivati alla conclusione che quest'ultimo presenta forti limiti di applicabilità. Allo stesso modo, sono stati investigati principi di diritto consuetudinario e fonti di diritto regionale. A dimostrazione di tale vuoto normativo, sono state esaminate sentenze di Corti chiamate a giudicare casi di richieste d'asilo dovute al degrado ambientale ed ai cambiamenti climatici. Quest'ultime, da un lato, hanno comprovato l'inadeguatezza degli attuali sistemi di protezione giuridica sia a livello internazionale che regionale; dall'altro, hanno dimostrato che i disastri ambientali influiscono negativamente sul pieno godimento dei Diritti Umani.

Alla luce di tale risultato, lo studio propone il ricorso alla protezione complementare come strumento in grado di complementare l'attuale insufficienza giuridica. Nel particolare, avvalendosi di elementi di Diritto Ambientale e di Diritto Umano, in questo lavoro si approfondisce l'emergente concetto del '*greening process*' dei Diritti Umani applicato al fenomeno della migrazione indotta dall'ambiente. Conseguentemente, si suggerisce un cambiamento rivolto al

tradizionale modo di intendere l'ambiente, figurando il passaggio da una prospettiva antropocentrica ad una prospettiva eco-centrica, nella quale l'ambiente e l'essere umano *coesistono,* a pari livello, nell'ecosistema. È fondamentale sottolineare che tale approccio 'rivoluzionario' si sta già sviluppando nella giurisprudenza americana a seguito, tra l'altro, dell'adozione del Protocollo Addizionale alla Convenzione Americana sui Diritti dell'Uomo del 1988, il quale riconosce il diritto ad un ambiente sano ai sensi dell'Articolo 11. Quest'ultimo, se riconosciuto a livello internazionale, potrebbe servire come base giuridica per garantire il diritto alla protezione internazionale nei casi di migrazione indotta dall'ambiente; nonché servire come obbligo di responsabilità ambientale per gli Stati in modo da garantire uno standard più elevato di qualità ambientale.

In tal merito, la tesi offre un approfondimento sul ruolo degli attori del sistema internazionale coinvolti, in maniera differente, nel fenomeno della migrazione indotta dall'ambiente. Tali attori sono: Stati, individui, Organizzazioni Internazionali, Multinazionali ed ONG. In questo contesto, è facile intuire che gli individui, assieme all'ambiente, sono le vittime del degrado ambientale, i quali però sono sprovvisti dei necessari requisiti per avere protezione. Infatti, sebbene gli individui possiedano diritti e responsabilità, non è automatico che siano in grado di ricorre alle Corti Internazionali. Difatti, secondo la Corte Internazionale di Giustizia, vi sono alcuni diritti individuali che possono essere fatti valere davanti ai tribunali solo attraverso il legame di nazionalità tra un individuo ed uno Stato, che è l'ultimo soggetto a concedere all'individuo la sua protezione. Tuttavia, gli individui possono presentare una richiesta contro uno Stato attraverso il ricorso ai Diritti Umani. In questo caso, gli individui possono sostenere violazioni dei loro Diritti Umani sia contro lo Stato di nazionalità, sia contro lo Stato in cui si trovavano al momento della violazione, indipendentemente dal fatto che sussista o meno un vincolo di nazionalità con quest'ultimo.

Indubbiamente, la questione della responsabilità per quanto riguarda i disastri ambientali è un argomento al quanto complesso. Secondo l'Articolo 48 sulla Responsabilità degli Stati per Atti Illeciti Internazionali, uno Stato leso può ritenere responsabile ogni Stato responsabile dell'illecito. Tuttavia, tale disposizione non include il caso in cui più Stati commettano atti illeciti diversi che sommati contribuiscono allo stesso danno internazionale, come nel caso dell'inquinamento globale, per il quale l'attuale regime internazionale non offre un provvedimento adeguato a chiedere un risarcimento. Inoltre, per quanto riguarda il risarcimento, la valutazione del valore delle lesioni

attribuite al cambiamento climatico ed al degrado naturale incontrerebbe alcune difficoltà derivanti dall'evidenza che le ripercussioni sociali e naturali, come la mobilità umana, la salute, la cultura, l'ecosistema ed altro, non hanno un valore economico intrinseco per il quale può essere chiesto un risarcimento. Altrettanto complesso è asserire che le Multinazionali abbiano, in termini giuridici, una responsabilità verso i disastri ambientali, nonostante la loro evidente condotta di sfruttamento di risorse sia umane che ambientali. A seguito di tali osservazioni, si è sostenuto che l'allocazione della responsabilità per un problema globale come il cambiamento climatico e il degrado ambientale può, in definitiva, trovare risposte legali all'interno della Convenzione Quadro delle Nazioni Unite per il Cambiamento Climatico.

Uno dei suoi strumenti più citati è l'Accordo di Parigi del 2015, il quale prevede il Principio delle 'responsabilità comuni ma differenziate'. In questo contesto, il Principio dovrebbe servire come strumento di condivisione degli oneri, per determinare la misura in cui i paesi sviluppati dovrebbero pagare i costi del cambiamento climatico a causa del loro maggiore contributo. Tuttavia, la parola responsabilità dà luogo a diverse interpretazioni. Effettivamente, durante le negoziazioni dell'Accordo di Parigi, gli Stati Uniti hanno interpretato il termine 'responsabilità' intendendolo come il rafforzamento del concetto di leadership e di competenza tecnica nello sviluppo delle politiche di protezione ambientale, in vista della loro superiore capacità e della loro ricchezza. Al contrario, gli Stati insulari in via di sviluppo si sono assicurati l'idea che i paesi sviluppati avrebbero dovuto assisterli nell'affrontare i costi dell'adattamento ai cambiamenti climatici, a causa della loro vulnerabilità. Di conseguenza, è chiaro che l'utilizzo di questo Principio per attribuire la responsabilità agli Stati a causa degli effetti risentiti da determinati individui, come nel caso delle migrazioni indotte dall'ambiente, mette a dura prova la tradizionale nozione di causalità. Pertanto, nell'attuale ordinamento giuridico internazionale, il Principio delle 'responsabilità comuni ma differenziate' non comporta alcuna responsabilità 'tradizionale' per gli Stati nel caso di danni connessi ai cambiamenti climatici. Ciononostante, una decisione importante è stata quella presa all'indomani della Conferenza delle Parti in Cancún (COP16), dove si fa riferimento per la prima volta, a livello interinazione, all'azione degli Stati nell'intraprendere misure di adattamento in termini di comprensione, coordinamento e cooperazione rispetto ai fenomeni di sfollamento, migrazione e ricollocazione pianificata indotti dai cambiamenti climatici. A testimonianza dell'importanza della cooperazione globale, tali misure devono essere implementate a livello nazionale, regionale ed internazionale.

Oltre a quanto già detto in merito agli attori del sistema internazionale, le ONG ambientaliste sono state significative grazie alla loro sempre più crescente partecipazione al processo legislativo negoziale e di applicazione delle leggi ambientali. Esse, difatti, appaiano una risorsa preziosa nel campo di battaglia a favore della protezione ambientale, nonché nella diffusione della consapevolezza del deterioramento naturale; questo perché il coinvolgimento della società civile a livello locale è alla base della necessaria azione globale contro i disastri ambientali. Conseguentemente, le ONG coprono anche il ruolo di guide pubbliche a livello locale, diramando la loro influenza a livello nazionale, regionale ed internazionale. Perciò, l'intento finale di questa ricerca è quello di dimostrare come un approccio a più strati possa, infine, creare un regime giuridico appropriato per il fenomeno della migrazione indotta dall'ambiente.

Come ripetuto più volte, la migrazione indotta dall'ambiente rappresenta una questione globale molto attuale che avanza particolari complessità. Infatti, ciò che emerge da questo lavoro è l'incompatibilità attuale, a livello internazionale, tra la natura giuridica di un individuo ad avere il diritto allo status di rifugiato e la natura giuridica di un individuo ad avere il diritto di vivere in un ambiente sano. Pertanto, la letteratura di riferimento si sofferma su un'ampia ed articolata speculazione giuridica che, tuttavia, non trova un'applicazione empirica definitiva. In virtù di tale difetto, questa tesi avanza un approccio totalmente diverso, basato sul cambiamento dell'attuale concezione dell'ambiente; un passaggio che si sta già attuando a livello regionale e che sta cercando di fertilizzare altri sistemi giuridici regionali. Nel particolare, nel ricorso alla protezione complementare, la quale si avvale principalmente di norme del Diritto Umano; alla luce dell'analisi sulla problematica ambientale che influenza le migrazioni, si enfatizza il cosiddetto '*greening process'* della Legge sui Diritti Umani. Quest'ultimo tende ad inserire elementi di Diritto Ambientale nel più grande spettro universale dei Diritti Umani, con l'intento di cambiare l'attuale paradigma con il quale vengono esaminate le questioni ambientali. In questa argomentazione ad ampio respiro, un ruolo fondamentale è stato svolto dalle Corti Regionali dei Diritti Umani, specialmente dalla Corte Inter-Americana dei Diritti Umani, la quale, per la prima volta nella storia dei contenziosi ambientali, ha riconosciuto il diritto ad un ambiente sano come un diritto autonomo dei Diritti Umani. Ai fini di questa investigazione, se tale diritto dovesse trovare un riconoscimento a livello internazionale, esso potrebbe servire come base giuridica per

la concessione della protezione internazionale, giacché il degrado ambientale è stata la causa originaria dello spostamento stesso.

Indubbiamente, tale riconoscimento giuridico necessita di essere inquadrato in un contesto più olistico rispetto a quello tradizionale; un contesto che renda possibile il cambiamento della comprensione dell'ecosistema da un'ottica antropocentrica ad un'ottica eco-centrica, nella quale la natura diventa un soggetto di diritto *coesistente* con la specie umana nell'ecosistema. Tale approccio olistico, ormai fiorente nella giurisprudenza americana, si sposa con l'idea che attraverso la cooperazione globale tra i vari attori del sistema internazionale, si potrà fertilizzare il terreno per una buona governanza globale - non 'giuridica' ma basata su un 'valore aggiunto'- volta ad una consapevolezza più ampia dei Diritti Umani, tale da coinvolgere anche l'ambiente e la migrazione.

TABLE OF ABBREVIATIONS

AALCO: Asian-African Legal Consultative Organization

ACHR: American Convention on Human Rights

ADB: Asian Development Bank

ARRT: Australian Refugee Review Tribunal

ASEAN: Association of Southeast Asian Nations

AU: African Union

AUSTLII: Australian Legal Information Institute

BITs: Bilateral Investments Treaties

CEAS: Common European Asylum System

CCNR: Central Commission for Navigation on the Rhine

COPs: Conference of the Parties

CRIDEAU: Centre de Recherches Interdisciplinaires en Droit de l'Environnement de l'Aménagement et de l'Urbanisme

CRDP: Centre de Recherche en Droit Public

CSR: Corporate Social Responsibility

CTC: Commission on Transnational Corporations

DARSIWA: Draft Articles on Responsibility of States for Internationally Wrongful Acts

DRR: Disaster Risk Reduction

ECOSOCC: Economic, Social and Cultural Council

ECOSOC: Economic and Social Council

ECHR: European Convention on Human Rights

ECtHR: European Court of Human Rights

EDPs: Environmentally-Displaced Persons

EU: European Union

EUQD: European Union Qualification Directive

FDIs: Foreign Direct Investments

FTAs: Free Trade Agreements

GHGs: Greenhouse gases

GMG: Global Migration Group

IACHR: Inter-American Commission on Human Rights

IACtHR: Inter-American Court of Human Rights

IASC: Inter-Agency Standing Committee

ICMPD: International Centre for Migration and Policy Development

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social, and Cultural Rights

ICJ: International Court of Justice

IDPs: Internally Displaced Persons

IFRC: International Federation of Red Cross

ILC: International Law Commission

ILO: International Labour Organization

IOs: International Organizations

IOM: International Organization on Migration

IPCC: Intergovernmental Panel on Climate Change

IPT: Immigration and Protection Tribunal

LAS: League of Arabs States

LDCs: Least Developed Countries

L&D: Loss and Damages

MECC: Migration, Environment, and Climate Change

MIRAB: Migration, Remittance, Foreign Aid and Public Bureaucracy

NAPA: National Adaptation Program of Action

NGOs: Non-Governmental Organizations

NIEO: New International Economic Order

NZAID: New Zealand Agency for International Development

OAS: Organization of American States

OAU: Organization of African Unity

OECD: Organization for Economic Cooperation and Development

PAC VISA: Pacific Access Category Visa

PICMME: Provisional Intergovernmental Committee for the Movement of Migrants from Europe

PSIDS: Pacific Small Islands Developing States

RPG: Refugee Policy Group

SHC: Secretary of Homeland Security

TNCs: Transnational Corporations

TPD: Temporary Protection Directive

TPS: Temporary Protection Status

TSR: Temporary Suspension of Removals

UDHR: Universal Declaration of Human Rights

UN: United Nations

UNDRR: United Nations Office for Disaster Risk Reduction

UNECE: United Nations Economic Commission for Europe

UNEP: United Nations Environmental Programme

UNFCCC: United Nations Framework Convention on Climate Change

UNGA: United Nations General Assembly

UNHCR: United Nations General Assembly

WB: World Bank

WHO: World Health Organization

WWI: World War I

WWII: World War II

INTRODUCTION

The present work proposes a study of the current legal system of international protection for instances regarding the phenomenon of 'environmental-induced migration'. Presently, this term does not find any accepted universal legal definition, meaning that there is not a legal basis from which protection can be granted. In light of this legal protection vacuum, this thesis advances a deep examination of legal gaps and challenges at the international level. Additionally, it analyzes the involvement of the actors of the international system, and finally, the resort to complementary protection as a mean to fill the current legal void.

For the purpose of this thesis, the expression 'environmental-induced migration' encompasses all those, permanent or temporary, movements that can occur, willingly or unwillingly, within or across borders in the aftermath or the foreseen of natural disasters. According to the United Nations Office for Disaster Risk Reduction (UNDRR), a disaster is a "*serious disruption of the functioning of a community or a society involving widespread human, material, economic or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources*"[1]. In this context, natural disasters are the combination of the exposure to natural hazards, which can be classified into two different categories: sudden-onset natural disasters and slow-onset natural disasters. The first refers to unexpected meteorological, hydrological, and geophysical hazards, such as, among others, typhoons and hurricanes, coastal floods and mudflows, earthquakes, and volcanic eruptions. Conversely, the second includes gradual-occurring hazards, such as, among others, sea-level rise, temperature increase, glacial retreat, loss of biodiversity as well as land and forest degradation[2]. Both types of disasters weigh on the issue of environmental-induced migration because they induce individuals to move from their habitual place of living in search of survival and of a better existence, often without the possibility of return. The problem lies in the absence of a legal system of reference from which international protection can be accorded.

For the sake of this thesis, it is also important to underline that the phenomenon of environmental-induced migration is not new. As a matter of fact, the environment has always been

[1] UNDRR: https://www.undrr.org [Accessed 17 June 2021].

[2] UN, High Commissioner for Refugee, *Key Concepts on Climate Change and Disaster Displacement,* Geneva, June 2017, p. 1.

a factor influencing displacements and migrations. However, it was only during the 1970s that scholars began investigating the linkage between environmental change and migration. One of the most precious contributions was the First Assessment Report of the Intergovernmental Panel on Climate Change (IPCC), which, in 1990, for the first time focused on the potential impacts of climate change on human migration[3]. Consecutively, linkages between environmental change and migration have increased both the public and the scientific debate; especially, for the multicausal nature of their relation as well as the complexity of their implications. Veritably, environmental change is not an isolated phenomenon; on the contrary, it interacts and influences socio-economic and political conditions, for which States are called upon to provide adequate policy responses as well as the denial or the permission of the legal entrance and stay of aliens in their territory. In this discourse, it appears that generally, the influxes of environmental-induced migration come from Least Developed Countries (LDC), which lack the capability to cope with natural hazards. Therefore, it can be argued that environmental-induced displacements are a mixture of exposure to possible natural hazards and vulnerability. At the same time, it seems that developed States are those held 'responsible' for the source of environmental change, at least for what concerns slow-onset disasters. Consequently, they should bear a sort of 'duty' in granting protection to individuals affected. However, as I will evidence, this is not the case.

The acknowledgement of the inexistence of an international legally-binding agreement and complicated policy and legal implications, with regard to events of environmental-induced migration, has led to the certainty that within these terms it is unlikely that an international consensus will be reached in the short-run. Subsequently, this study will suggest the resort to complementary protection. In particular, basing the reasoning on sources of Human Rights and Environmental Law, it will be argued about the necessity of changing the paradigm through which environmental matters are commonly addressed. This approach will imply the shift from an anthropocentric view into an eco-centric one, which will be carefully exemplified throughout the analysis of several Courts' judgments. Finally, by connecting all the elements of this study the result will lead to the conclusion that a multilayered approach to cooperation and good global governance will be the key mechanism able to provide a solution to the issue of environmental-induced migration.

[3] IPCC, *Climate Change, The IPCC Scientific Assessment: Final Report of Working Group I*, Cambridge, Cambridge University Press, 1990.

The work has been conducted by availing of primary and secondary sources concerning the topic and related fields, as well as official websites of the recognized international and regional institutions involved in the problem of environmental change and human mobility. The literature consulted was based on both general and specific cases, regarding international, regional, and national issues, which was in line with the aim of investigation in trying to solve a common problem. However, in some parts, the study was more detailed on the American, European, and Oceania jurisprudence in relation to Courts' judgments on environmental questions. Extensive reference has been made to academic publications issued by the most relevant international academic journals and books specialized in international law, politics, human rights, migration law, humanitarian law, environmental law, global governance, sustainability, and business development. Furthermore, broad reference has been made to the documentation published by the United Nations (UN), its bodies, agencies, and related organizations, such as, among others, the Human Rights Committee, the High Commissioner for Refugees, and the International Organization for Migration (IOM). Similarly, regional literature has been consulted. These international and regional sources included, among others, conventions, resolutions, declarations, comments, views, and reports. Finally, as aforementioned, the analysis has been integrated with selected cases law to support argumentations and findings.

The thesis is articulated in four chapters framed by a table of content, an abstract, a table of abbreviation, an introduction, and a conclusion; each chapter is subdivided into several paragraphs and subparagraphs that focus on different aspects of the analysis. It begins with a historical and general presentation of the problem of environmental-induced migration and its evolution, progressively narrowing the focus to the international legal system of reference and the actors concerned, to conclude with the proposition of resorting to complementary protection and multilayered cooperation.

Chapter 1, titled 'The evolution of environmental-induced migration', concerns important premises in order to understand the nature of the phenomenon, its evolution, and its implications. It starts with the explication of the 'traditional' notions and definitions of 'migrant', 'refugee', and internally displaced persons (IDPs); it explains the progressive awareness of the phenomenon of environmental-induced migration at the international level, as well as the constraints of the international community in finding a suitable universal definition, and it recognizes the unsuitability of the adoption of the 'refugee' label; ultimately, it adopts an ecopolitical perspective

to concentrate on the socio-economic constraints of the issue of environmental change, encompassing strategies of adaptation and mitigation with regard to the most vulnerable and affected areas, such as the case of the Pacific Small Islands Developing States (PSIDS), whose situation is analyzed in the last section of this chapter.

Chapter 2, titled 'The current legal framework', highlights the absence of a binding-agreement concerning environmental-induced migration and therefore, focuses on existing instruments of international protection, to which reference is traditionally made for instances of international human mobility, namely: the 1951 Refugee Convention and its 1967 Additional Protocol, and the principle of *non-refoulement*[4]. Successively, it considers regional systems of protection under the notion of 'refugee', such as the 1966 Bangkok Principles, the 1969 AOU Convention, and the 1984 Cartagena Declaration[5]; the case of IDPs' protection, which underlines the importance of the 2009 Kampala Convention[6] as the first legally-binding regional system that recognizes natural disasters as direct drivers of displacements; and conclusively, it envisages the necessity of creating a new legal protection framework given the limited effects of current international agreements, combining both sources of hard and soft law.

Chapter 3, titled 'Actors', concentrates on the involvement of States and non-State actors, such as IOs, TNCs, and NGOs, which have been contributing, willingly or unwillingly, positively or negatively, to the development of the phenomenon of environmental-induced migration. Beginning with a consideration of the crucial role of States as primary subjects of International Law, the focus gradually shifts on non-State actors as evolutionary subjects of the international system influencing and shaping decision-making processes, especially with regard to environmental matters. Initially, it is presented a scrutiny on the responsibility of States in relation to environmental-induced migration, which is hardly imputable due to the difficulty in establishing the unique origins of environmental harm subsequently, it is exposed the so-called 'denial machine'

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[4] UN, High Commissioner for Refugees, *Convention Relating to the Status of Refugees,* Geneva, 1951, and its *Additional Protocol Relating to the Status of Refugees,* New York, 1967.
Ivi, Art. (33) on the principle of *non-refoulement.*

[5] AALCO, *Bangkok Principles on the Status and Treatment of Refugees* (Bangkok Principles), Bangkok, December 31st, 1966; OAU, *Convention Governing the Specific Aspects of Refugee Problems in Africa,* Addis Ababa, September 10th, 1969; and OAS, *The Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama* (Cartagena Declaration), Cartagena, 1984.

[6] AU*, African Union Convention for the Protection and Assistance of International Displaced Persons in Africa* (Kampala Convention), Kampala, October 2009.

process with regard to climate change, and a final section is dedicated to the experience of New Zealand, which with its humanitarian intervention in the Islands of the Pacific Region is serving as a constructive model in the implementation of adaptation strategies for industrialized Countries. Furthermore, it is discussed the role of TNCs and their exploitative character towards the environment and human rights, as well as whether they can be held responsible for environmental harm. Importantly, several sections are devoted to the engagement of IOs against environmental problematics, such as, among others, the UN with the establishment of the UNFCCC tasked to provide legal responses for environmental degradation and climate change, and the IOM, with its intensifying commitment on human mobility caused by environmental conditions. Lastly, it is enhanced the growing and persistent ability of NGOs in 'pushing' States towards the enforcement of environmental norms through the adoption of Human Rights Law; in this respect, it is cited the case of *Urgenda*[7] in support of the successful outcome of the involvement of the global society on environmental questions. A section is also consecrated to individuals, which along with the environment, are the 'victims' of the issue at study as demonstrated throughout the examination of the case of *Teitiota v. New Zealand*[8].

Chapter 4, titled 'Complementary protection', focuses on the resort to complementary protection, based on sources of human rights and environmental norms, as a tool to complement the current legal protection vacuum of the international regime, so as to create the legal basis from which international protection can be directly granted for episodes of environmental-induced migration. It is described the (r)evolutionary process of 'greening' Human Rights Law, which has been taking place at the regional level; in this context, it is investigated the work of the American jurisprudence, in the performance of the main representative of this new approach that envisages a change in paradigm with regards to environmental matters. Furthermore, it is stressed the necessity of recognizing at the international level the right to a healthy environment, which is instead already enshrined in the 1969 American Convention on Human Rights. In conclusion, other existing instruments of Human Rights Law and their applicability for the phenomenon at study are argued; it is proposed a comparison of the American and European 'temporary protection' systems with reference to environmental-induced migration, and to complete the overall study, the last

[7] *The State of the Netherlands v. Stichting Urgenda,* Judgment 19/00135, Supreme Court of the Netherlands, December 20th, 2019.

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

section intends to evidence the necessity of adopting a multilayered approach based on global cooperation in order to solve a global problem, namely the issue of environmental-induced migration.

CHAPTER 1: THE EVOLUTION OF ENVIRONMENTAL-INDUCED MIGRATION

1. The notion and the international legal definition of migration

Migration is a phenomenon that has characterized human history since its early times, and it refers to the movement of humankind from one place to another, entailing a permanent or temporary settlement. Human migration can be within a single country (internal migration), or across borders (international migration) as well as voluntary or involuntary, in accordance with different sources. As a matter of fact, throughout history, migration flows have followed one another as a consequence of various 'push' and 'pull' factors[9], such as, among others, economic needs, security, conflicts, and environmental degradation[10].

The aim of this first chapter is that of introducing the phenomenon of migration induced by environmental changes. The study will be conducted starting from an analysis of the notion and the legal definition of migration, as well as that of refugees and internally displaced persons (IDPs). Accordingly, it will be argued to what extent the environmental element influences migration patterns, so as to present and explore the notion of environmental-induced migration, its effects, and possible policy responses.

From the beginning of the 16th century, in accordance with the European lust for expansion, migration flows followed the logic of colonialism. European colonialism, especially during its last phase, was encapsulated in the concept of mercantilism, whereby European colonialists transported "labourers" from Africa to the colonies, with the only aim of exploiting those lands in return for economic profit[11]. Furthermore, during the period of the Industrial Revolution massive migration flows of populations from rural to urban areas have been registered both within and across countries. However, a turning point in the history of migrations was the period between 1945 and the 1980s, which was characterized by 'long-distance migrations' involving all the regions of the world. Great mobility was the result of industrial development, which allowed the creation of new and modern means of transportation, as well as advanced communication

[9] Push factors relate to the source area, whereas pull factors to the destination area.

[10] CASTLES S., DE HAAS S., AND MILLER M. J., *The Age of Migration: International Population Movements in the Modern World,* 5th Edition, London, Palgrave Macmillan, 2014, p. 5.

[11] VAN DE BOOGAART E. AND EMMER P. C., Colonialism and Migration: An Overview, in *Colonialism and Migration; Indentured Labour Before and After Slavery*, Dordrecht, Martinus Nijhoff Publishers, 1986, p. 3.

technologies. This process enabled migrants to travel cheaper, easier, and to keep stable contacts with family and friends[12]. Moreover, especially during the last decades, migration has been intensifying and diversifying alongside the process of globalization and its consequences. Certainly, in the era of globalization, the human experience of time, place, and space has changed; therefore, strong interdependence, but also growing global inequality are linked to the rise of international migration flows. Their origins remain essentially the same, such as the prospect for a better quality of life; however, the associated migration policies have moved beyond the local and national institutional framework, reaching a more regional and even global approach, seeking transnational cooperation between sending, transit, and receiving countries[13]. Notwithstanding the global response to international migration flows, Castles argues that the latter is still embedded within a national attitude, because they tend to be regarded as a threat to the authority of Nation-States[14]. Indeed, with the increase of the number of migrations' flows in the receiving countries, activities of borders-control have been challenged, undermining the concept of state sovereignty. At the same time, States have been encountering difficulties in the prevention of unwanted migrations' flows. Consequently, one way in which states have been trying to maintain control was via the classification of international migrants into categories[15], that will be shortly investigated.

[12] CASTLES S., DE HAAS S., AND MILLER M. J., *The Age of Migration: International Population Movements in the Modern World,* 5th Edition, London, Palgrave Macmillan, 2014, p. 5.

[13] TRIANDAFYLLIDOU A., *Handbook of Migration and Globalization*, Cheltenham, Edward Elgar Publishing, 2018, pp. 5-8. Despite the high global cooperation, there is a huge debate among scholars toward the effectiveness of migration policies. See: TRIANDAFYLLIDOU A., *Routledge Handbook of Immigration and Refugee Studies*, London, Routledge, 2015, Chapter 2.

[14] CASTLES S., International Migration at the Beginning of the Twenty-First Century: Global Trends and Issues, in *International Social Science Journal*, 2000, p. 270.

According to the Montevideo Convention, which was adopted during the Seventh International Conference of the Organization of American States (OAS), the standard definition of statehood, accepted as part of international customary law, follows four main elements. The Convention stipulates that all States are equal *sovereign* units within their well-defined territorial boundaries; they consist of a permanent population; they are ruled by international recognized governments; and they possess the ability to enter into relations with the governments of other states. Through the practice of illegal and unregulated migration, the element of sovereignty has been challenged. See: OAS, *The Montevideo Convention on the Rights and Duties of States* (Montevideo Convention), Montevideo, December 26th, 1933 entered into force on December 26th, 1934, available at https://www.ilsa.org/Jessup/Jessup15/Montevideo%20Convention.pdf [Accessed 20 January 2021].

[15] CASTLES S., International Migration at the Beginning of the Twenty-First Century, op., cit. p. 278.

Although international migration is not a recent phenomenon[16], nowadays, there is no single theory concerning migration, as well as there is no universal legal definition for 'migrant'. Nevertheless, several theoretical models have undertaken the task of explaining the process of human migration while framing different references, focusing on diverse causes, and advancing various assumptions. The oldest theory, and probably the most known, is based on neoclassical economics, which explains that people migrate in the frame of labour migration as a direct consequence of the process of economic development[17]. Following this reasoning, States have tried to divide international migrants into categories according to the length of their stay, their skills, their degree of willingness, the regularity of their entrance and stay, as well as the source of their movement[18]. However, the main reason why the legal definition for a migrant is still missing, lies in the fact that the international community has been facing a fundamental disagreement, thus whether or not the term 'migrant' should also include the movements of people that flee from their usual place of residence[19]. The international community is, therefore, split between two separate views: 'inclusivist' and 'residualist'. On the one hand, in accordance with the 'inclusivist' view, a migrant is any person who moves from her or his usual place of residence, regardless of the legal status that holds, as well as the reason for the movement itself. On the other hand, in consonance with the 'residualist' view, a migrant is any person who moves from her or his usual place of residence with regard to any reason except for fleeing from persecutions[20]. The dichotomy between the two views has resulted in various definitions of the term 'migrant'; among these, the International Organization for Migration (IOM) has stated that the term 'migrant' refers to:

> An umbrella term, not defined under international law, reflecting the common lay understanding of a person who moves away from his or her place of usual residence, whether within a country or

[16] Actually, O'Reilly has defined international migration as "a normal feature of contemporary societies". See: O'REILLY K., Migration Theories: a Critical Overview, *in* TRIANDAFYLLIDOU A., *Routledge Handbook of Immigration and Refugee Studies*, London, Routledge, 2015, p. 25.

[17] MASSEY D. S., ARANGO J., HUGO G., KOUAOUCI A., PELLEGRINO A., AND TAYLOR J. E., Theories of International Migration: A Review and Appraisal, *Population and Development Review,* Vol. 19, No. 3, September 1993, pp. 432-433.

[18] CASTLES S., International Migration at the Beginning of the Twenty-First Century: Global Trends and Issues, in *International Social Science Journal*, 2000, pp. 270-271.

[19] CARLING J., What is the meaning of migrant?: https://meaningofmigrants.org [Accessed 20 January 2021].

[20] Ibid.

> across an international border, temporarily or permanently, and for a variety of reasons. The term includes a number of well-defined legal categories of people, such as migrant workers; persons whose particular types of movements are legally defined, such as smuggled migrants; as well as those whose status or means of movement are not specifically defined under international law, such as international students[21].

What can be evinced by this definition is that the terms migration and migrant cover all the people that move, permanently or temporarily, from their usual place of residence, across or within a country. Movements, here, are intended as both legally and non-legally defined as well as the reasons for their displacement are understood as both voluntary and involuntary. The causes of the movement, always here, can be both for simple expectations of a better life abroad and for escaping from persecutions; therefore, following an explicit inclusivist approach.

The United Nations High Commissioner for Refugees (UNHCR) has also proposed its standpoint on the matter, by describing the conditions for being a migrant in line with a 'residualist' approach. The UN Refugees Agency, therefore, has so affirmed:

> Anyone moving from one country to another is considered a migrant unless he or she is specifically fleeing war or persecution. Migrants choose to move not because of a direct threat of persecution or death, but mainly to improve their lives by finding work, or in some cases for education, family reunion, or other reasons[22].

In opposition to the first definition, here, a migrant is any person who chooses to move with the hope of finding a better quality of life. On the contrary, people that flee because of the fear of death, or any other form of persecution, cannot be defined as such[23]. Additionally, what is

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[21] IOM, *Glossary on Migration: International Migration Law Series,* Geneva, International Organization for Migration (IOM), No. 24, 2019, p. 132.

[22] J. CARLING, What is the meaning of migrant? : https://meaningofmigrants.org [Accessed on 20 January 2021].
See also: SENGPUTA S., *Migrant or Refugee? There Is a Difference With Legal Implications*, The New York Times, August 27th, 2015, available at https://www.nytimes.com/2015/08/28/world/migrants-refugees-europe-syria.html?_r=0 [Accessed 20 January 2021].

[23] Ibid.

relevant here, is to specify under what circumstances the choice of leaving the place of usual residence and undertake the movement has been taken. Consequently, it is present a neat distinction between migrants and, what is referred to as refugees, who belong to another category[24].

In line with this distinction, the aim of the next paragraph will be that of discussing the notion and the international legal definition of two more categories of migrants, specifically refugees and internally displaced persons (IDPs). However, before engaging in their analysis, I would like to recall the recent fundamental contribution given by the 2016 New York Declaration for Refugees and Migrants[25]. Pursuant to the view of considering migrants and refugees separately, The New York Declaration not only has been filling the gap in the international protection system between refugees and migrants but has also been remarking their distinct legal status[26]. Subsequently, it has paved the way for two important Global Compacts: the Global Compact on Refugees (Annex I), and the Global Compact for Safe, Orderly and Regular Migration (Annex II)[27]. In 2016, The UN General Assembly, celebrating the anniversary of the adoption of the 2030 Agenda for Sustainable Development, by adopting Resolution 71/1 decided to address the large movements of migrants and refugees as well as to remember the positive contribution of these people in fostering sustainable development and growth[28]. Therefore, during the UN Summit for Refugees and Migrants of 2016, 193 Members of the UN adopted the Declaration with the aim of improving the way in which the international community should respond to large movements of refugees and migrants[29]. Although the Declaration is not legally-binding, surely it provides a powerful tool in the global response towards migrants and refugees flows.

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[24] J. CARLING, What is the meaning of migrant? : https://meaningofmigrants.org [Accessed 20 January 2021].

[25] UN, *New York Declaration for Refugees and Migrants:* https://www.unhcr.org/new-york-declaration-for-refugees-and-migrants.html [Accessed 20 January 2021].

[26] UN, United Nations General Assembly, Resolution 71/1, Seventy-first Session, *New York Declaration for Refugees and Migrants,* New York, September 19th, 2016, Annex I *Comprehensive Refugee Response Framework*, and Annex II *Towards a Global Compact for Safe, Orderly and Regular Migration.*

[27] Ibid.

[28] Ivi, p. 1.

See also: UN, *Sustainable Development Goals and the 2030 Agenda*: https://www.un.org/sustainabledevelopment/development-agenda/ [Accessed on 20 January 2021], and UN, United Nations General Assembly, Resolution 70/01, Seventh Session, *Transforming our World: The 2030 Agenda for Sustainable Development,* New York, September 25th, 2015.

[29] Ibid., and UN, Summit for Refugees and Migrants: https://refugeesmigrants.un.org/summit [Accessed 20 January 2021].

1.1 Refugees and Internally Displaced Persons (IDPs)

Unlike the legal definition of migrant, the international system provides a universally accepted legal definition of 'refugee'. In response to the need of protecting the great number of internationally displaced persons produced in the aftermath of World War II, where millions of people decided to flee their homelands in search of refuge, the international community decided to sign the 1951 Convention on the Status of Refugees[30], whose Article 1 (a) para. 2 provides the definition of 'refugee'. The latter is defined as 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, 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[31].

As can be observed, the Convention refers only to people fleeing from their original countries, because of five reasons of persecution: race, religion, nationality, membership of a social group, and membership of a political opinion. Consequently, it covers only this category of people and not all migrants. Moreover, the Convention holds a temporal limitation, referring only to all the events that occurred before 1 January 1951. Furthermore, according to Article 1 (b) these events should have been intended as only those that occurred in Europe[32]. As a matter of fact, the Convention was conceived considering the European unregulated migratory flows of refugees in the context of the two Great Wars. However, with the rise of people being persecuted also outside Europe, the international community decided to add the 1967 Protocol to the Convention[33] amending and expanding the scope of the latter, as well as amplifying the possibilities for other

[30] UN, High Commissioner for Refugees, *Convention Relating to the Status of Refugees,* Geneva, adopted in 1951 and entered into force in 1954.
[31] Ivi, Art. 1 (a) (2).
[32] Ivi, Art. 1 (b) (1).
[33] UN, High Commissioner for Refugees, *Protocol Relating to the Status of Refugees,* New York, 1967.

countries for ratification[34]. Therefore, the 1951 Convention and its additional Protocol confer rights to people fleeing any country at any time, precisely because the latter is no longer a guarantor of their protection and safety[35].

The 1951 Convention establishes, among others, an essential principle: the principle of *non-refoulement*[36]*,* which is a norm of customary international law that prevents the repatriation of all people to their countries of departure because of the fear of threats to their life and the violation of fundamental human rights[37]. Moreover, the main standards of the 1951 Convention have been acquired also by other regional legal instruments, such as the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa[38], and the 1984 Cartagena Declaration on Refugees in South America[39] as well as the 1966 Bangkok Principles on the Status and Treatment of Refugee[40], and the 1994 Arab Convention Regulating the Status of Refugees in the Arab Countries[41]. The European Union (EU) has also its own regional legal instrument: the 1999 Common European Asylum System (CEAS)[42]. As recognized by the 1951 Geneva

[34] EVANS M. D., *International Law*, 5th Edition, Oxford, Oxford University Press, 2018, pp. 813-814. See: UN, High Commissioner for Refugees, *States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol*, p. 5, available at https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html [Accessed 21 January 2021].

[35] A more in-depth analysis of the Convention will be provided in Chapter 2, especially in connection with the protection of people displaced because of environmental disasters.

[36] UN, High Commissioner for Refugees, *Convention Relating to the Status of Refugees,* Geneva, adopted in 1951, Art. 33.

[37] UN, High Commissioner for Refugees, *Note on Non-Refoulement (Submitted by the High Commissioner), EC/SCP/2,* Executive Committee of the High Commissioner's Programme, Twenty-Eighth Session, Sub-Committee of the whole on International Protection, August 23rd, 1977 available at https://www.unhcr.org/afr/excom/scip/3ae68ccd10/note-non-refoulement-submitted-high-commissioner.html [Accessed 21 January 2021]

[38] ORGANIZATION OF AFRICAN UNITY (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa,* Addis Ababa, September 10th, 1969.

[39] ORGANIZATION OF AMERICAN STATES (OAS), *The Cartagena Declaration on Refugees* (Cartagena Declaration), Cartagena, 1984.

[40] ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION (AALCO), *Bangkok Principles on the Status and Treatment of Refugees* (Bangkok Principles), Bangkok, December 31st, 1966.

[41] LEAGUE OF ARAB STATES (LAS), *Arab Convention on Regulation Status of Refugees in the Arab Countries,* 1994.

[42] EUROPEAN COMMISSION, *Common European Asylum System* (CEAS): https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en [Accessed 15 February 2021]. After the entry into force of the Treaty of Amsterdam in 1999, the European Union has competence in the field of asylum. See: EU, Council of the European Union, *Treaty of Amsterdam Amending the Treaty on European Union, The Treaties Establishing the European Communities and Related Acts,* Official Journal of the European Communities, November 10th, 1997 available at https://www.refworld.org/docid/51c009ec4.html [Accessed 15 February 2021].

Convention, and its Protocol as well as the 2000 Charter of Fundamental Rights of the European Union[43], the CEAS grants the principle of *non-refoulement*[44]. In addition, among the legislation components of the CEAS[45], the 2004 EU Qualification Directive (EUQD)[46], recast in 2011[47], makes references to the definition of refugee. Although the latter appears narrowed[48], the 2011 EUQD establishes 'subsidiary protection' for those not qualifying as refugees but still facing a real risk of death.

Lastly, the 1951 Convention requires that people seeking refugee status need to be outside of their country of departure; nevertheless, as anticipated at the beginning of this thesis, migratory movements can be both across and within countries. In the latter case, migrants will be described under the term of internally displaced persons (IDPs), and will, therefore, require a different legal regime[49]. The latter has been established by the 1998 Guiding Principles on Internal Displacement, which in their introductive part provide the legal description of IDPs, stating as follows:

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[43]EU, *The Charter on Fundamental Rights of the European Union (CFR),* Nice, October 2nd, 2000, and entered into force on December 7th, 2000. However, the Charter started to have full legal effect only with the entry into force of the 2009 Treaty of Lisbon, which forms the constitutional basis of the European Union. See: EU, *Treaty of Lisbon*, Lisbon, December 13th, 2007, entered into force on December 1st, 2009.

[44] See: Art. 33 of the 1951 Convention Relating to the Status of Refugee, and Art. 19 of the Charter of Fundamental Rights of the European Union.

[45] The CEAS is composed by five legislative instruments and one agency, namely the Asylum Procedure Directive, the Reception Conditions Directive, the Qualification Directive, the Dublin Regulation, the EURODAC Regulation, and the European Asylum Support Office. See: EVANS M. D., *International Law*, 5th Edition, Oxford, Oxford University Press, 2018, pp. 813-814.

[46] *European Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted,* Official Journal of the European Union, Bruxelles, April 29th, 2004 available at *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0083&from=EN* [Accessed 21 January 2021].

[47] *European Council Directive 2011/95/EU on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (recast),* Official Journal of the European Union, Bruxelles, December 13th, 2011 available at *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0095&from=EN* [Accessed 21 January 2021].

[48] *European Council Directive 2011/95/EU on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (recast),* Official Journal of the European Union, Bruxelles, December 13th, 2011, Art. 1 referring to only third-country nationals, and Art. 5 (3) referring to third-country nationals or stateless people as beneficiaries of international protection and the content of the protection granted, pp. 13-15.

[49] EVANS M. D., *International Law*, 5th Edition, Oxford, Oxford University Press, 2018, p. 825.

> For the purpose of these Principles, internally displaced persons 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 recognized State border[50].

How can be noticed, the description is broad and encompasses many categories of people, which are displaced within a single State. As a matter of fact, the Guiding Principles set out a series of rights for IDPs dealing with wider protection than that provided to refugees by the 1951 Geneva Convention; in particular, in the introduction, they promote and permit humanitarian assistance[51]. Displacements, here, might be caused by multiple reasons, related to different types of persecutions, whose sources normally preclude the enjoyment of fundamental human rights. Differently from other types of migrants, IDPs are displaced within national borders; therefore, their movements are regulated under national law, and they are granted the same rights and freedoms as the citizens of the country[52]. Given the primary responsibility of national governments, the UNHCR (unlike in the case of refugees) has not an exclusive role in the relation to internal displacements; furthermore, its Statute does not confer a general mandate regarding IDPs. For these reasons, the UNHCR can assist IDPs only in specific emergencies, accompanied by an explicit request by competent organs, and only after the State concerned has granted its consent to conduct operations within its own territory[53]. Nevertheless, the issue of IDPs has been addressed not only by single states but also at the regional level. The 1994 San José Declaration represents one example of this. For the occasion of the anniversary of the 1984 Cartagena Declaration on Refugees, OAS' Central and South American countries have drawn the 1994 San José Declaration on Refugees and Displaced Persons[54]. The Declaration extends the protection of IPDs from a

[50]UN, High Commissioner for Refugees, *Guiding Principles on Internal Displacement,* (E/CN.4/1998/53/Add.2) 1998, p. 1.
[51] EVANS M. D., *International Law*, 5th Edition, Oxford, Oxford University Press, 2018, p. 825
[52] UN, High Commissioner for Refugees, *Guiding Principles,* op., cit., p. 2.
[53] UN, High Commissioner for Refugee's mandate for refugees, stateless persons and IDPs, available at https://emergency.unhcr.org/entry/113370/unhcrs-mandate-for-refugees-stateless-persons-and-idps [Accessed 1 February 2021].
[54] OAS, *San Jose Declaration on Refugees and Displaced Persons,* San Jose, December 7th, 1994. However, also the AU has formally implemented the protection of IDPs by establishing the 2009 Kampala Convention. See Chapter 2.

national to an international framework, by recognizing the primary responsibility of the State of origin as well as by calling for the international community involvement, especially when the issue implicates the potential violation of human rights and the resort to cross-border movements[55]. The Declaration, moreover, includes the principle of *non-refoulement* for the implementation of the IDPs protection[56]. However, this argument will be discussed more in-depth in Chapter 2.

To conclude, the notion of migration encompasses diverse types of movements, which can be temporary or permanent, voluntary or involuntary, national or international, depending upon diverse sources. The determination of the latter is particularly important in relation to the need of identifying the legal status of the person undertaking the movement and, therefore, the establishment of the legal protection system.

2. From migration to environmental-induced migration

In this paragraph, I will proceed by introducing the features that led the international community into the debate of environmental-induced migration; successively, I will continue by analyzing the challenges encountered at the international level in finding a definition for the phenomenon at issue; finally, I will focus on environmental-induced migration, and on how a person can or cannot be considered as a refugee in this circumstance.

The environment has always been a factor influencing displacements and migrations. Indeed, in the aftermath of a natural disaster people have always tried to cope by moving from one to another climate zone in search of survival and of a better existence. Consequently, environmental change has become a threat to human security and a new pattern of migration[57]. The first available research about their connection appeared during the late 1800s, when western scholars understood that, to a certain extent, environmental conditions were influencing human activities. However, it was only during the 1970s that scholars began investigating the linkage between climate change and migration, as a result of the rise of a series of catastrophic natural

[55] OAS, *San Jose Declaration on Refugees and Displaced Persons,* San Jose, December 7th, 1994.
[56] Ivi, p. 5.
[57] OLIVER-SMITH A., RENAUD F. G., WARNER K., AND HAMZA M., *Climate Change, Environmental Degradation and Migration,* Natural Hazards, December 2020, p. 692.

disasters that negatively impacted populations in some regions of the world[58]. In the 1980s, although environmental disasters due to climate change were still conceived as a scientific issue, scientists began looking into their economic, political, and social consequences, as these were determining where people were living[59]. In 1990, the Intergovernmental Panel on Climate Change (IPCC) issued its First Assessment Report referring to the potential impacts of climate change on human migration[60], as well as a warning about the displacement of millions of people caused by, among others, shoreline erosion, coastal flooding, and seasonal droughts[61]. Linkages between environmental change and migration have increased both the public and the scientific debate so that the International Organisation for Migration (IOM), the Refugee Policy Group (RPG), and the Swiss Department of Foreign Affairs decided to hold in Nyon in 1992 the first Conference on the Nexus Between Environment and Migration[62]. The final paper of the conference emphasized the presence of migration flows induced by environmental changes. Although it had a brief history, the most relevant contribution was the acknowledgement of the presence of multiple factors that caused this type of displacements. Therefore, the 1992 Nyon Conference invited further research on the conceptualisation of the nexus and moved the issue from the environmental sphere to the human sphere[63]. The multicausal nature of migration in relation to environmental change reflected discussions between two opposite views, namely minimalist and maximalist. The examination of these two divergent approaches is of particular importance for framing the phenomenon. Indeed, the perspective through which migration induced by environmental change is viewed influences dramatically the way it is perceived and regulated. Therefore, its conceptualization is the key in order to present the issue, as well as to tackle it via appropriate policy responses[64].

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[58] MCLEMAN R. AND GEMENNE F., *Routledge Handbook of Environmental Displacement and Migration*, 1st Edition, London, Routledge, 2018, pp. 4-5.
See also: ASSAN J. K., *Environmentally Induced Migration, Vulnerability and Human security: Consensus, Controversies and Conceptual Gaps for Policy Analysis,* Journal of International Development, November 2012.
[59] MCLEMAN R. AND GEMENNE F., *Routledge Handbook,* op., cit., p. 9.
[60] IPCC, Climate Change, The IPCC Scientific Assessment: Final Report of Working Group I, Cambridge, Cambridge University Press, 1990.
[61] Ibid.
[62] Conference on Migration and the Environment, Nyon, 1992.
[63] GEMENNE F., *How They Became the Human Face of Climate Change: The Emergence of 'Climate Refugees' in the Public Debate, and the Policy Responses it Triggered*, UNESCO Chapter, 2011, p. 4.
[64] MCADAM J., *Climate Change*, *Forced Migration and International Law*, Oxford, Oxford University Press, 2012, p. 15.

The minimalist, or sceptical, approach emphasizes the presence of complex determinants involved in mobility decisions, and it argues about the essentiality of taking into account empirical evidence of past and current migration patterns, in order to assess the likelihood of future environmental-induced migrations. Minimalists are sceptical about climate change itself as the only cause of the movement; therefore, they evidence the danger in the creation of policy responses that do not recognize the complexity of the migratory movements[65]. Kibreab was the first representative of this approach[66]. He argued that environmental migration was used by national governments as an excuse to depoliticize displacements' causes, and as a derogation to their obligations in providing asylum assistance, because environmental disasters were not a constituent of the necessary basis for international protection. Therefore, the concept of environmental-induced migration was perceived as a threat to the refugees' protection as well as a justification for the national restrictive asylum policies[67]. Disagreement whit this point of view is to be found in the work of Black[68], who affirms that the literature on environmental-induced migration, actually, requests an extension of the current refugee regime, rather than a restriction. However, he agrees with the affirmation that national governments may opt for asylum policy restrictions as the majority of migration flows occur in developing countries[69]. Finally, in line with his critic, he stated that there is no explicit demonstration of the connection between the environment and migration flows[70].

In opposition with the previous view, the maximalist, or alarmist, approach analyzes climate change-related movements as part of a bigger issue, mostly related to the general risks of climate change. Its proponents are scholars from an environmental studies background; therefore, they warn about the disruptive nature of climate change and envisage that a very large number of

[65] MCADAM J., *Climate Change*, *Forced Migration and International Law*, Oxford, Oxford University Press, 2012, p. 25.

[66] See: KIBREAB G., *Environmental Causes and Impact of Refugee Movements: A Critique of the Current Debate*, Disasters, Vol. 21, No. 1, 1997, pp. 20-38.

[67] GEMENNE F., *How They Became the Human Face of Climate Change: The Emergence of 'Climate Refugees' in the Public Debate, and the Policy Responses it Triggered*, UNESCO Chapter, 2011, p. 9.

[68] See: BLACK R., *Refugees, Environment and Development*, Harlow, Addison Wesley Longman, 1998.

[69] See note 67.

[70] PERCH-NIELSEN S. L., AND BÄTTIG M. B., *Exploring the Link Between Climate Change and Migration*, Climate Change, ETH Zürich, April 2008, p. 376. See: BLACK R., *Environmental Refugees: Myth or Reality?,* Working Paper No. 34, New Issues In Refugee Research, University of Sussex, Brighton, March 2001.

people will be displaced due to it[71]. This perspective sees environmental induced-migration as a threat to national security; its main proponent is Homer-Dixon[72]. His main argument is that environmental change will cause the movements across borders of 'environmental refugees'[73], who will destabilize the domestic order of the recipient countries, and as a consequence the overall international stability[74]. He based his argumentation on empirical evidence from Bangladesh, where a high number of migrants fled to neighbouring India causing, among others, group identity conflict that led to ethnic clashes. Furthermore, he argues that migration will be a trigger of future conflicts over the appropriation of natural resources, which will be restricted due to the augmentation of the number of people in the same place[75]. Since climate change and environmental disruptions became to be perceived as the main contributors to insecurity, the alarmist theory made its way into the policy realm modelling an anti-immigration agenda[76]. Furthermore, building upon this approach, some of its scholars tried to further examine the linkages between environmental disruptions and migration with the aim of forecasting future migration flows. The main exponent of this kind was the environmentalist Myers[77]. He wrote extensively on the topic feeding the well-known media appetite for numbers, as well as daring on forecasting precise estimate of the number of migrants. In 2002, he predicted that due to global warming circa 200 million people in 2050 will be overtaken by natural hazards of unprecedented harshness and length. His work was numerous times cited in media reports and other studies, most notably in *The Stern Review*[78]. Certainly, credits to him are recognized with respect to drawing worldwide attention on the topic

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[71] MCADAM J., *Climate Change*, *Forced Migration and International Law*, Oxford, Oxford University Press, 2012, p. 26.

[72] See: HOMER-DIXON T. F., *On the Threshold: Environmental Changes as Causes of Acute Conflict*, International Security, Vol. 16, No. 2, 1991, pp. 76-116; and *Environmental Scarcities and Violent Conflict: Evidence from Cases*, International Security, Vol. 19, No. 1, 1994, pp. 5-40.

[73] In 1985, the researcher El-Hinnawi in the United Nations Environmental Program introduced this term; however, there is no legal acceptance by the international community on this term.

[74] GEMENNE F., *How They Became the Human Face of Climate Change: The Emergence of 'Climate Refugees' in the Public Debate, and the Policy Responses it Triggered*, UNESCO Chapter, 2011, p. 5.

[75] Ibid.

[76] MCADAM J., *Climate Change,* op., cit., p. 4.

[77] GEMENNE F., *How They Became the Human Face of Climate Change,* op., cit., p. 7.
See also, among others: MYERS N. AND KENT J., *Environmental Exodus: An Emergent Crisis in the Global Arena*, The Climate Institute, Washington D. C., 1995, and MYERS N., Environmental Refugees, *Population and Environment,* Vol. 19, No. 2, 1997, pp. 167-182, and *Environmental Refugees: An Emergent Security Issue*, 13th Economic Forum, Session III (EF.NGO/4/05), Environment and Migration, Prague, May 22nd, 2005.

[78] STERN N. H., *The Economics of Climate Change: The Stern Review*, Cambridge, Cambridge University Press, 2007.

of environmental-induced migration. However, his work, as aforementioned, was largely based on speculative 'common sense'[79] rather than scientific estimates; for this reason, he has been strongly criticized by some scholars[80]. Lastly, another promoter of this kind was Bates, who tried to classify people displaced by climate change into three main categories[81]. The first category encompasses people displaced by general disasters, which produce limited movements in terms of the short length of the relocation, that are the direct consequence of sudden-onset natural or anthropogenic disasters such as hurricanes, floods, earthquakes, or technological accidents[82]. The second category includes people displaced due to the expropriation of the environment, which refers to the situation in which warfare and economic development render incompatible their presence with the stay of inhabitants, who are therefore forced to permanently dislocate to another place[83]. Finally, the third category encloses people displaced due to the deterioration of the environment in which they reside, which is mainly caused by slow-onset disasters such as drought, desertification, sea-level rise, pollution, depletion and alike, that gradually deteriorate the environment. In this case, nevertheless, direct effects of slow deterioration on migration flows are rare to establish[84].

Finally, what can be stated is that debates on the concept and the nature of environmental-induced migration, and the nexus between environmental hazards and migration flows strongly contributed to draw the attention of the international community. However, as it has been analyzed, the literature on environmental-induced migration is divided into two major perspectives, that of researchers arguing that the environment is the primary cause for migration, and that of those criticizing this approach not recognizing an evident connection between the two phenomena[85]. Certainly, further search is more than advisable, especially, in consideration of the necessity of defining

[79] One of the main critics advanced by the minimalist researchers.

[80] GEMENNE F., *How They Became the Human Face of Climate Change: The Emergence of 'Climate Refugees' in the Public Debate, and the Policy Responses it Triggered*, UNESCO Chapter, 2011, p. 8.
See also: CASTLES S., *Environmental Change and Forced Migration: Making Sense of the Debate*, United Nations High Commissioner for Refugees, Working Paper No. 70, Geneva, 2002, pp. 1-14 available at https://www.unhcr.org/research/working/3de344fd9/environmental-change-forced-migration-making-sense-debate-stephen-castles.html [Accessed 3 February 2021]

[81] BATES C. D., Environmental Refugees? Classifying Human Migrations Caused by Environmental Change, in *Population and Environment*, Vol. 23, No. 5, May 2002, p. 469.

[82] Ivi, pp. 469-471.

[83] Ivi, pp. 471-472.

[84] Ivi, pp. 473-475.

[85] PERCH-NIELSEN S. L., BÄTTIG M. B., AND IMBOTEN D. M., Exploring the Link Between Climate Change and Migration*, Climate Change,* ETH Zürich, Springer Verlag, April 2008, pp. 375-376.

environmental-induced migration in legal terms in order to provide a concrete legal protection system for the most concerned. The aim of the following part, therefore, will be that of investigating the evolution of the efforts and the challenges undertaken by the international community in this regard.

2.1 The difficulty and the risks in establishing a universal definition

In contemporary international law, there is no universal legal definition for the notion of migration induced by environmental conditions. The reasons for this gap are multiple, as I have extensively argued in the previous section[86]. The lack of the adoption of an internationally binding treaty has somehow made possible the existence of a quite consistent number of definitions such as 'environmental migration', 'climate change-induced migration', 'environmental or climate refugees', 'eco-refugees', 'climate change migrants', 'environmentally displaced persons', and alike[87]. For the purpose of this study, I decided to adopt the term 'environmental-induced migration' as an umbrella term that could cover all the movements produced in the aftermath or prevision of any environmental change and disaster, which could lead people voluntary or involuntary, permanently or temporary to leave their usual place of residence and to move within or outside the same country.

In the middle of the debate on the nexus between environment and migration, the first scholar who attempted to formulate a definition that could cover all the people displaced by natural disasters was El-Hinnawi. In the 1985 United Nation Environmental Programme, he suggested the term 'environmental refugees'[88], which refers to:

> 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 [sic]. By 'environmental disruption' in this definition is

[86] See, among others: PERCH-NIELSEN S. L., BÄTTIG M. B., AND IMBOTEN D. M., Exploring the Link Between Climate Change and Migration*, Climate Change,* ETH Zürich, Springer Verlag, April 2008.

[87] DUN O. V. AND GEMENNE F., *Defining 'Environmental Migration',* Climate Change and Displacement, in Forced Migration Review, Vol. 31, 2008, p. 10 available at https://ro.uow.edu.au/cgi/viewcontent.cgi?article=2406&context=sspapers [Accessed 3 February 2021].

[88] The term was first popularised by Lester Brown of The Worldwatch Institute in the 1970s; however, the most quoted for its use rests El-Hinnawi.

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[89].

This is a quite broad definition that encompasses people's movement of different types and sources, such as temporarily displaced people, usually internally, by sudden-onset events; permanently displaced people in another area of their country due to anthropocentric accidents and man-made changes of their habitat; and displaced people in response to the slow-onset deterioration of their environment, moving temporarily or permanently usually across international borders[90]. Following this definition, Jacobson, in his book '*Environmental Refugees: a Yardstick of Habitability*' published in 1988, defined three categories of environmental refugees:

1) Those people temporarily displaced due to local sudden natural disruptions, such as an avalanche or earthquake;
2) Those people who migrate permanently because environmental degradation has undermined their livelihood or poses unacceptable risks to health;
3) Those people who resettle temporarily or permanently because of progressive and slow degradation or other permanent changes of their natural habitat, such as desertification or deforestation[91];

Some years later, in 1993, Myers and Kent advanced another definition of 'environmental refugees' in their research report at the Climate Institute, which reads as follows:

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 disasters such as cyclones, storm surges and floods. In face of these environmental threats, people feel they have no

[89] EL-HINNAWI E., *Environmental Refugees*, United Nations Environmental Programme (UNEP), Nairobi, 1985, p. 4.
[90] BATES C. D., Environmental Refugees? Classifying Human Migrations Caused by Environmental Change, in *Population and Environment*, Vol. 23, No. 5, May 2002, pp. 469-475.
[91] JACOBSON J. L., *Environmental Refugees: a Yardstick of Habitability,* Washington, D.C., Worldwatch Institute, 1998, pp. 37-38.

> alternative but to seek sustenance elsewhere, whether within their own countries or beyond and whether on a semi-permanent or permanent basis[92].

As can be remarked, this definition focuses more on the causes of the environmental hazard, rather than the type of movement.

Another operational definition was proposed more recently by the IOM in 2005; however, the term 'environmental refugee' has been replaced by 'environmental migrant', in line with the scope of broadening, and rendering more flexible the consideration of the diverse range of population movements due to all types of environmental drivers. The UN Migratory Agency has so defined:

> Environmental migrants are 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[93].

This working definition encompasses people who are displaced by natural disasters, as well as those who choose to move because of deteriorating conditions both temporarily and permanently. Moreover, it acknowledges that environmental-induced movements or displacements can be both internal and international in scope. The intent is that of offering an umbrella term that could cover the majority of situations, as well as that of suggesting an alternative definition to 'environmental refugee', which is a term that according to the UNHCR has no legal meaning in international refugee law[94]. In this regard, as already mentioned, many studies on the matter have concluded that labels are important specifically because according to the accepted definition, the latter will produce legal consequences and real implications for the most concerned. In other words, risks lie in the fact that each definition will mark differently the

[92] MYERS N. AND KENT J., *Environmental Exodus: An Emergent Crisis in the Global Arena*, The Climate Institute, Washington D. C., June 1995, pp. 18-19.
[93] IOM, Migration and the Environment, Ninety-Fourth Section, Geneva, November 2007, pp. 1-2.
[94] Ibid.

obligations of the international community under international law[95]. For this reason, in the following part, I will bear an analysis about the term 'refugee' used in the context of environmental-induced migration, which most of the time has been erroneously used only with the scope of attracting the attention of media and policymakers towards the urgency of the problem. Nevertheless, some scholars argue that any other terminology would downplay the seriousness of these people's situation[96]. Therefore, whether to use it or not is still a heated debate.

2.2 The 'refugee' label in environmental-induced migration

In order to discuss the implications of the term 'refugee' in the context of environmental-induced migration, it is necessary to recall where the term originated at first. As introduced in the first section of this chapter, the 1951 Convention Related to the Status of Refugees and the 1967 Protocol to the Convention[97] use the term 'refugee' in order to define any individual who is outside of their country of origin and is unable or unwilling to return it or to avail themselves of its protection, on account of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular group, or political opinion[98]. Therefore, unless it is assumed that the environment could be a persecutor, the term refugee does not appear suitable for describing people displaced by environmental factors[99]. Furthermore, since in international refugee law, environmental conditions do not constitute a basis for international protection, the terminology, in this context, appears useless as it cannot serve as a solution to the problem.

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[95] IOM, *Migration and Climate Change: IOM Migration Research Series*, Geneva, International Organization for Migration (IOM), No. 31, 2008, p. 13.

[96] Ibid.

See also: MCADAM J., *Swimming Against the Tide: Why a Climate Change Displacement Treaty is not the Answer,* International Journal of Refugee Law, Vol. 23 No.1, Oxford University Press, January 10th, 2011; MAYER B., *The International Legal Challenges of Climate Induced Migration: Proposal for an International Legal Framework,* Colorado Journal of International Environmental Law and Policies, Vol. 22, No. 3, February 201; and BLACK R., *Environmental Refugees: Myth or Reality?,* Working Paper No. 34, New Issues In Refugee Research, University of Sussex, Brighton, March 2001.

[97] UN, High Commissioner for Refugees, *Convention Relating to the Status of Refugees,* Geneva, 1951; and UN, High Commissioner for Refugees, *Protocol Relating to the Status of Refugees,* New York, 1967.

[98] Ivi, p. 14.

[99] OLIVER-SMITH A., RENAUD F. G., WARNER K., AND HAMZA M., *Climate Change, Environmental Degradation and Migration,* Natural Hazards, December 2020, p. 695.

Another issue is related to fact that the term 'refugee' refers to people crossing borders; consequently, its definition does not include IDPs. As a result, all the persons displaced within the same country due to environmental degradation cannot avail of its protection[100]. Secondly, the term 'refugee' implies the right of return; however, this is quite impossible when it comes to irreversible natural hazards such as volcanic eruptions, tsunami, sea-level rise and alike. Therefore, the term would distort the nature of the phenomenon itself[101]. Moreover, it has been argued that the adoption of the term 'refugee' could undermine the standards of protection afforded to disasters' victims, which seem to operate at a lower level than that concerning refugees protected under The Refugee Convection[102]. In addition, outside the legal sphere, it has been contended that the adoption of the term 'refugee' entails foreign policy implications between the 'originating' and the 'receiving' country. As a matter of fact, the notion would make a negative connotation with regard to the country of departure, creating situations of discomfort when two states actually enjoy good and stable relationships[103]. Additionally, the term 'refugee' leads to an oversimplification of the problem, and consequently to the failure in evaluating the complexity and the variables that characterize the phenomenon itself[104]. Indeed, if the environment would be accepted as a cause of migration, flow patterns should be analyzed, thus it must be considered the degree of choice that renders the movement voluntary or involuntary. In other words, if the choice has been taken because of the fear of death due to natural catastrophes, or because elsewhere the prospects of life seem better. Hence, to ensure that the term 'environmental refugee' retains its fundamental integrity, it is also important to consider the decision-making process[105]. Finally, as it has been presented in the previous part, this term would assume that there is a direct link between environmental change and migration, which has not been scientifically proved[106].

Other authors have used the expression 'climate refugee', which however refers only to a category of people displaced precisely because of a change in the global climate. Black, for

[100] IOM, *Migration and Climate Change: IOM Migration Research Series*, Geneva, International Organization for Migration (IOM), No. 31, 2008, p. 14.
101 Ibid.
[102] RAMLOGAN R., *Environmental Refugees: a Review,* Environmental Conservation, Cambridge, 1996, p. 86.
[103] Ibid.
[104] JAYAWARDHAN S., *Vulnerability and Climate Change Induced Human Displacement*, Consilience, 17, Columbia University, 2017, p. 107.
[105] See note 102.
[106] See note 104.

example, examined the condition of permanent climate refugees and drawn the conclusion that there is no existing specific international legal regime that could be applied to climate migrants. In particular, climate change law focuses on climate change mitigation and adaptation at the national level, but it does not recognize a status for those who cannot adapt in their own country and have to flee elsewhere[107]. However, according to McAdam, the identification of such a category of refugees could generate a stricter classification of people moving due to climate change impacts, preventing those excluded from the definition of climate refugee from receiving international protection[108]. For these reasons, an extension of the actual international protection system is needed, or the creation of a specific protection system able to assist these people[109]. However, Black complains, with a degree of scepticism, with regard to the necessity and utility of addressing the issue of definition, as it is not certain that this could actually produce a relevant reduction of displacements caused by environmental change, or that this could bring major attention on addressing environmental problems[110].

Another critical aspect to be tackled concerning the use of the term 'refugee' is the negative connotation that this brings with it, which, to a certain extent, becomes a stigma for the most concerned. Indeed, as it has been argued in the first paragraph of this chapter, migrants, in general, have been considered as a threat to the notion of nation-state and national security[111], especially if they are presented with the term 'refugee', which implies the obligation of international protection, and activates the principle of non-refoulement. For these reasons, often vulnerable communities feel the need of resorting to migration so as to maintain what is left of their dignity. Furthermore, if on the one hand, the term 'refugee' renders them the victims of the dislocation; on the other hand, it leaves the primary issue of responsibility unsolved[112]. Michelot was the first who introduced the issue of environmental responsibility to the debate. According to her, the

[107] MAYER B., *The International Legal Challenges of Climate Induced Migration: Proposal for an International Legal Framework,* Colorado Journal of International Environmental Law and Policies, Vol. 22, No. 3, February 2011, p. 369.

[108] MCADAM J., *Swimming Against the Tide: Why a Climate Change Displacement Treaty is not the Answer,* International Journal of Refugee Law, Vol. 23 No.1, Oxford University Press, January 10th, 2011, p. 17.

[109] This argument will be discussed in Chapter 2.

[110] BLACK R., *Environmental Refugees: Myth or Reality?,* Working Paper No. 34, New Issues In Refugee Research, University of Sussex, Brighton, March 2001, p. 14.

[111] See Chapter 1.

[112] MCADAM J., *Climate Change, Forced Migration, and International Law*, Oxford University Press, United Kingdom, 2012, p. 197.

recognition of the status for people displaced due to environmental disasters will imply the acknowledgement of global responsibility and the implementation of the concept of environmental justice[113]. Finally, another obstacle encountered regarding the use of the term 'refugee' lies in the resistance in broadening its concept. In international law, despite the imminence of an unprecedented humanitarian emergency, it is present an incompatibility between the legal nature of an individual to have the right of refugee status, and the legal nature of an individual to have the right to live in a healthy and balanced environment[114]. As this right is still lacking at the international level, while it has been recognized by some regional and national systems comprehending the most affected areas[115], the term 'refugee' continues to be unsuitable for the vast category of people moved by environmental hazards[116].

Conclusively, following the deep analysis conducted in understanding the risks and the difficulties in finding the most appropriate definition that could encompass a large number of movements due to climate change and environmental disasters, is clear that the debate is still open. Through the years, minimalists and maximalists have tried to assess the nexus between environmental change and migration so as to find a suitable definition for the phenomenon, which resulted in the proposal of the term 'refugee'. However, for all the above explanations, the use of the term 'refugee' and the associated definitions of 'environmental refugee', 'climate refugee' and alike, are not adequate to represent the vast group of people moving in response to or the foreseen of natural disasters impacts; especially, in light of the considerable range of determinants shaping

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[113] MICHELOT A., *Enjeux de la Reconnaissance du Statut de Réfugié Écologique pour la Construction d'une Nouvelle Responsabilité Environnementale*, Revue Européenne de Droit de l'Environnement, Vol. 10, No. 4, 2006, pp. 428-445.

[114] KRUPP DA LUZ C. AND VIEIRA DE SIQUEIRA E. C., *Contextualizing Environmental Migration: the Gap Between the Legal Nature of Refuge and Environment During the Age of Global Warming and Natural Catastrophes*, Revista de Direito Econômico e Socioambiental, Vol. 9, No. 1, July 2018, p. 8.

[115] The Inter-American Court of Human Rights, for the first time, on its decision on Indigenous Communities Members of the *Lhaka Honhat Association v. Argentina* adopted on February 6th, 2020, recognized the right to a healthy environment. The Court analyzed the rights to a healthy environment, indigenous community property, cultural identity, food, and water based on Article 26 of the American Convention on Human Rights, which refers to the progressive development of economic, social, and cultural rights. The Court held that Argentina has violated these rights of the Lhaka Honhat indigenous groups, and ordered measures of reparation toward their restitution, including actions for access to adequate food and water, for the recovery of forest resources, and to maintain indigenous culture; available at https://www.corteidh.or.cr/docs/casos/articulos/resumen_400_ing.pdf [Accessed 3 February 2021].
See also: OAU, *The African Charter on Human and Peoples Rights* (Banjul Charter), Nairobi, adopted on June 27th, 1981, and entered into force on October 21st, 1986, Art. 24, which guarantees the right to people to "a general satisfactory environment favourable to their development", p. 24.

[116] The resort to other instruments of protection to adopt in the case of people displaced due to environmental changes will be object of further discussions in Chapter 4.

the modalities and the causes of displacements, as well as the consequent policy responses. For these reasons, displacements stemming from natural disasters and the effects of climate change have been identified within a normative gap in the international legal protection system[117]. This will be the main subject of Chapter 2.

3. The issue of environmental-induced migration

I will now discuss the main effects and consequences produced by environmental hazards. I will also show the case of the Pacific Small Islands Developing States (PSIDS) in regard to the 'sinking islands issue'.

Environmental change is not an isolated phenomenon; on the contrary, it interacts and influences socio-economic and political conditions, which in most cases induce State's governments to adopt policies aimed at determining both movements denial and the right to settle elsewhere[118]. Climate-related movements are being considered in relation to sudden-onset and slow-onset events, which, according to the UNHCR, the first comprises meteorological hazards such as typhoon, hurricane, blizzard, tropical tornado, cyclone as well as geophysical hazards including tsunami, earthquake, and volcanic eruption; the second involves sea-level rise, oceanic acidification, land and forest degradation, increasing temperatures, glacial retreat, loss of biodiversity, and desertification[119]. In response or the forecast of these phenomena, people are often forced to leave their habitual places because they are embedded in a situation of extreme vulnerability. Further, the majority lacks the essential resilience to withstand the drastic change. Consequently, it is clear that disaster displacements are of a different nature from those deriving from 'simple migration'[120]. As a matter of fact, it can be argued that environmental-induced displacements are a mixture of exposure to possible natural hazards and vulnerability. Although the type of displacements is more associated with sudden-onset events, their association with slow-

[117] MCADAM J., *Climate Change, Forced Migration, and International Law*, Oxford University Press, United Kingdom, 2012, p. 1.
[118] OLIVER-SMITH A., RENAUD F. G., WARNER K., AND HAMZA M., *Climate Change, Environmental Degradation and Migration,* Natural Hazards, December 2020, p. 690.
[119] UN, High Commissioner For Refugees, Key Concepts on Climate Change and Disaster Displacement, available at https://www.unhcr.org/protection/environment/5943aea97/key-concepts-climate-change-disaster-displacement.html [Accessed 3 February 2021].
[120] Ibid.

onset events may be dependent on whether slow-onset events have turned into natural disaster situations that affect individuals with no other rational option than to leave[121]. Accordingly, societies that are characterized by the same level of exposure to natural hazards, finding themselves in a specific geographical area, may be distinguished by different vulnerabilities that mirror their separate socio-economic and environmental challenges. In other words, the most vulnerable people have the lowest opportunities to adapt locally in the aftermath of a natural disaster as well as to migrate away from risks, which often constitute a possibility of last resort[122].

Another important aspect to consider is that of relocation. When environments become inhospitable and people are pushed to leave, sometimes their local knowledge may not be appropriate for the new place where they migrate; as a consequence, displaced people may not receive the support they need in the destination area[123]. Moreover, for those displaced in areas where the lack of adequate infrastructure follows the direct consequence that their survival is dependent on the environment, the overexploitation of natural resources may be a huge problem. In particular, overexploitation could lead to potable water scarcity, soil degradation, deforestation, but also pollution, potential epidemics and conflicts. Under such circumstances, migrants could further stress the ecosystem as well as unleash secondary effects such new environmental catastrophes[124].

Climate change influences not only vulnerable geographic territories but also destination cities. The phenomenon of urbanization changes the use of lands, develops the emission of heat, and thickens the construction of buildings. Reasonably, all these human activities influence the local climate of cities. One of the primary effects of urbanization is the so-called 'urban heat island' (UHI) effect, which refers to when colling rates of the cities becomes slower than that of the rural zones[125]. Indeed, scientists have found that the rapid urbanization process that occurred during the 1970s and the 2010s resulted in a faster total warming rate of the urban areas of about 10% than

[121] PRIVARA A. AND PRIVAROVA M., *Nexus Between Climate Change, Displacement and Conflict: Afghanistan Case*, Open Access Journal, Vol. 11, No. 20, October 2019, p. 4. The difference between people affected by sudden-onset events (earthquake) and slow-onset events (sea-level rise) lies in the fact that in the second instance people have a margin of decision before moving.
[122] Ivi, p. 5.
[123] OLIVER-SMITH A., RENAUD F. G, WARNER K., AND HAMZA M., *Climate Change, Environmental Degradation and Migration,* Natural Hazards, December 2020, p. 696.
[124] Ibid.
[125] PRIVARA A. AND PRIVAROVA M., *Nexus Between Climate Change, Displacement and Conflict,* op., cit., p. 7.

rural ones[126]. At the same time, from the late 1970s, the sharp increment in disaster casualties and hazards elicited a huge question about disasters policy responses. However, at that time, the majority of these focused exclusively on emergency relief and humanitarian aid, and only after a while it was realized that this approach could not suffice anymore[127]. Consequently, it was recognized the role of vulnerability, and only afterwards states attempted to amortize natural risks with the creation of national agencies for disaster management, as well as with the introduction of damage compensations to be paid to victims of environmental disruptions[128].

In the absence of a binding agreement, International Organizations such as the UNHCR and the IOM have advanced in providing operational responses to the issue, which have been translated into a document entitled Operational Guidelines on Human Rights and Natural Disasters[129]. In 2006, the Inter-Agency Standing Committee (IASC), in the aftermath of the 2004 Indian Ocean tsunami and the 2005 Hurricane Katrina, drafted this working document, which outlines four types of protection guaranteed to people affected by natural disasters, namely the protection of life, security of the person, physical integrity and dignity; protection of rights related to basic necessities of life; protection of other economic, social and cultural rights; and protection of other civil and political rights[130]. Although these Guidelines are the most advanced effort in the matter, with a consequent international and institutional approach, disaster management remains focused largely on emergency operations and hardly on the long-term needs of people displaced. Therefore, despite the greater acknowledgement of social vulnerabilities, further implementation of policy responses is still needed[131]. This discourse will be deepened in further chapters.

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[126] PRIVARA A. AND PRIVAROVA M., *Nexus Between Climate Change, Displacement and Conflict: Afghanistan Case*, Open Access Journal, Vol. 11, No. 20, October 2019, p. 7.
See also: HAUSFATHER Z., MOSHER S., MENNE M., WILLIAMS C., AND STOKES N., The Impact of Urbanization on Land Temperature Trends: https://wattsupwiththat.com/2011/12/05/the-impact-of-urbanization-on-land-temperature-trends/ [Accessed on 3rd February 2021].

[127] GEMENNE F., *How They Became the Human Face of Climate Change: The Emergence of 'Climate Refugees' in the Public Debate, and the Policy Responses it Triggered*, UNESCO Chapter, 2011, p. 16.

[128] Ibid.

[129] IASC, *Protecting Persons Affected by Natural Disasters: IASC Operational Guidelines on Human Rights and Natural Disasters,* Brookings-Bern Project on Internal Displacement, Washington DC, June 2006.

[130] Ivi, pp. 18-32.

[131] See note 127.

3.1 Vulnerability and discrimination: mitigation versus adaptation

As explained, vulnerability, among others, is one of the main problems related to natural disasters and displacements. In the 2019 IOM Glossary on Migration the notion of vulnerability in the context of migration has been defined as follows:

> […] the limited capacity to avoid, resist, cope with, or recover from harm. This limited capacity is the result of the unique interaction of individual, household, community, and structural characteristics and conditions[132].

From this definition, it can be assumed that vulnerability refers to the individual people's degree of exposure and of susceptibility to different forms of harm. As a matter of fact, depending on the source, vulnerability can be of different kinds, namely vulnerability to food insecurity, natural hazards, violence and abuse, rights violations, and others. Moreover, vulnerability depending on the context, thus on different social, situational, and structural factors in which people find themselves, refers also to the risk of neglect, discrimination, abuse, and exploitation. Consequently, is it evident that there is an interplay of many factors that cover the sociodemographic characteristics, the capacities, the location, and the opportunities of the affected people[133].

Vulnerability in the context of migration has been considerably treated in the 2018 Report of the United Nations High Commissioner for Human Rights[134]. In particular, the Human Rights Council underlined that the factors that provoke vulnerability may also occur at different time, thus when the migrant is in his/her habitual residence and he/she has to leave, during the transit phase, or in the destination place, and concerning a person's identity, condition or circumstances[135]. Lastly, the report stresses that migrants are vulnerable to human rights violations as a result of

[132] IOM, *Glossary on Migration: International Migration Law Series,* Geneva, International Organization for Migration (IOM), No. 24, 2019, p. 229.
[133] IOM, *Guidance Note on How to Mainstream Protection across IOM Crisis Response*, IN/232, 2016, pp. 6-7.
[134] UN, High Commissioner for Human Rights, *Principles and Practical Guidance on the Protection of the Human Rights of Migrants in Vulnerable Situations*, Thirty-seventh Section, Addendum A/HRC/37/34/, Report of the United Nations High Commissioner for Human Rights, February 7th, 2018.
[135] Ivi, para. 13.

multiple and intersecting forms of discrimination, inequality, structure, and society, which lead to reduce and render unequal the level of power and enjoyment of the rights[136].

Vulnerability refers also to the adaptive capacity of the individual or group to a new situation. Therefore, in this study, vulnerability is considered as the direct association to the capacity of the migrant to adapt to environmental change. The two factors are indirectly proportional, meaning that an increase in vulnerability is a decrease in adaptive capacity and vice versa[137]. Vulnerability of migrants both generated and exacerbated by barriers to international migrations, can aggravate, among others, criminalization, border restrictions, lack of regular migration flows, family unity, education, and humanitarian needs[138]. Additionally, slow-onset events can considerably exacerbate inequalities concerning women, children and indigenous populations. Women can face inequalities in front of human social freedoms and means necessary to realize economic and cultural rights, while children can face inequalities concerning the denial of education and services. Finally, indigenous groups are those facing the greatest inequalities from slow-onset events as they negatively affect their rights of water, food, health, self-determination, livelihood, accession to resources and territories, culture, and so on[139]. For all the reasons here mentioned, effective policy measures for increasing their capacity of response vulnerable are necessary. Consequently, in 1992, in the aftermath of the sign of the United Nations Framework Convention on Climate Change[140], the so-called 'international climate change regime' has been created with the successive adoption of a high number of climate policies, institutions, and instruments to tackle climate change and related phenomena. The fight against this issue, against climate change, has developed towards two opposite approaches: mitigation and adaptation[141].

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[136] UN, High Commissioner for Human Rights, *Principles and Practical Guidance on the Protection of the Human Rights of Migrants in Vulnerable Situations*, Thirty-seventh Section, Addendum A/HRC/37/34/, Report of the United Nations High Commissioner for Human Rights, February 7th, 2018, p. 13.

[137] PRIVARA A. AND PRIVAROVA M., *Nexus Between Climate Change, Displacement and Conflict: Afghanistan Case*, Open Access Journal, Vol. 11, No. 20, October 2019, p. 6.

[138] UN, High Commissioner for Human Rights, *Principles and Practical Guidance on the Protection of the Human Rights of Migrants in Vulnerable Situations*, Thirty-seventh Section, Addendum A/HRC/37/34/, Report of the United Nations High Commissioner for Human Rights, February 7th, 2018.

[139] See note 137.

[140] UN*, United Nations Framework Convention on Climate Change* (Rio Convention) Rio de Janeiro, June 14th, 1992.

[141] GEMENNE F., *How They Became the Human Face of Climate Change: The Emergence of 'Climate Refugees' in the Public Debate, and the Policy Responses it Triggered*, UNESCO Chapter, 2011, p. 17.

Mitigation considers all the different political efforts, diplomatic initiatives, or international agreements that aim at reducing CO2 emissions. Conversely, adaptation means to taking actions in order to adapt to climate change impacts[142]. A very important instrument that has been adopted for addressing climate change, in the field of mitigation, was the 1997 Kyoto Protocol[143]. This international instrument was issued within the Conference of the Parties number 3 (COP3) and entered into force in 2005. The most important aspect of the Kyoto Protocol is encapsulated in the principle of 'common but differentiated responsibility', according to which the burden of mitigation efforts is only on the countries listed in Annex 1, namely the most developed countries. Therefore, according to the Protocol only developed countries have obligations in taking formal commitments in order to reduce CO2 emissions[144]. Additionally, a particularly important tool within the Kyoto Protocol framework is the so-called 'emission trading system' (EMS), according to which the market can be used in an efficient way in order to trade polluting rights. In this system, there is an artificial 'carbon market' where there are countries that reduce their CO2 emissions and sell polluting rights to the countries that are not able to implement policies in order to diminish their CO2 emissions. As a consequence, if one country wants to continue to emit CO2, it needs to buy 'the right to pollute'. However, one of the most relevant problems of this system is clearly the inefficiency of the market itself, because the price for buying a ton of CO2 should increase as the emissions of CO2 increment. Yet, this is not happening[145]. Moreover, another important point that has been introduced by the Kyoto Protocol is the 'clean development mechanism', in which climate change is defined as an externality in both its causes and consequences. This means that the incremental impact of a ton of greenhouse gases (GHGs) on climate change is independent of where in the world it is emitted. Therefore, according to this mechanism, a developed country included in Annex 1 can implement projects of mitigation in less developed countries for reducing CO2 emissions, and in doing that, the developed country receives a 'certified emission reduction' (CER) to be sold in the artificial market of polluting rights. Of course, in this mechanism, countries exchange value rights according to the basis of their own

[142] WALLACE D. AND SILANDER D., *Climate Change, Policy and Security*, London, Routledge, 2018, pp. 15- 16.
[143] UN, *United Nations Framework Convention on Climate Change* (Kyoto Protocol), Kyoto, December 11th, 1997.
[144] Ivi, Art. 3.
[145] Ivi, Art. 17.

capacity to reduce CO2 emissions[146]. Finally, the 'clean development mechanism' allows linking together a country that belongs to Annex 1 with a country that does not belong to it. Consequently, if a developing country ratifies the Kyoto Protocol can have access to the technological improvements of the countries belonging to Annex 1, meaning that the building capacities of the developing countries are supported by developed countries[147].

Adaptation, instead, has become central in the debate on climate change mainly because mitigation efforts have been failing in being effective in the reduction of CO2 emissions below the level established in the 2015 Paris Agreement during the COP21[148]. Indeed, the Paris Agreement gives high implementation to adaptation strategies to climate change through the 'intended nationally determined contribution' (INDC). This instrument, although not legally binding, contains the binding commitments to reduce CO2 emissions taken by the Parties to the agreement. The underlying idea is that as international agreements are failing in reducing CO2 emissions, the only suitable solution is that for national states to adapt and develop resilience in order to continue to work with the impacts of climate change[149]. In this context, one of the most important factors for adaptation is that the most affected countries are the poorest ones: those that have the least capabilities or the least economic, financial, and institutional resources to cope with the effects of climate change. It is in this discourse that appears clear a fundamental problem of environmental justice, as it is evident that poor countries are the least responsible for CO2 emissions; nevertheless, they are the most impacted[150].

Lastly, adaptation takes form according to different national characteristics, such in the case of coastal cities, arid areas, and so on. Consequently, this means that on the basis of the adaptation policies that national governments adopt, emphasis will be put on different priorities.

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[146] UN, *United Nations Framework Convention on Climate Change* (Kyoto Protocol), Kyoto, December 11th, 1997, Art. 12.

[147] WALLACE D. AND SILANDER D., *Climate Change, Policy and Security*, London, Routledge, 2018, p. 18.

[148] The Paris Agreement sets out a global framework to avoid dangerous climate change by limiting global warming to well below 2°C and pursuing efforts to limit it to 1.5°C"; UN, *United Nations Framework Convention on Climate Change* (Paris Agreement), Paris, December 15th, 2015, Art. 2 (a).

[149] Ivi, Art. 4, para. 2.

[150] MAANTAY J., *Mapping Environmental Injustices: Pitfalls and Potential of Geographic Information Systems in Assessing Environmental Health and Equity,* Environmental Justice, Environmental Health Perspectives, Vol. 110, Sup. 2, April 2002, pp. 1-11.
See also: MCADAM J., *Swimming Against the Tide: Why a Climate Change Displacement Treaty is not the Answer,* International Journal of Refugee Law, Vol. 23 No.1, Oxford University Press, January 10th, 2011, p. 17.

The priority of poor countries is that of capacity building, which means to build in the poorest countries the capacity to design development and to implement strategies at a variety of scales: local, national, regional, and international. This is related to the fact that the main environmental problems are neither limited nor constrained by national borders[151]. However, for the poorest countries, the problem consists in how to support their adaptation measures. Therefore, for the development of the required capacity building, three relevant aspects have been identified: the first element is the alleviation of poverty through the development of their economies; the second element is the transfer of technology through multilateral agreements; the third element is good governance[152]. In relation to the latter, in the case of mitigation, the most important aspect is the effective international and regional effort. Since one single country cannot have an impact on the climate system at a world level, international agreements and regional efforts are needed. Conversely, in the case of an adaptation, the most important aspect is the quality of public governance in terms of transparency, democracy, and participation[153]. Finally, it can be concluded that good governance also means linking mitigation and adaptation strategies to poverty reduction, intending to address the main causes of vulnerability and discrimination in the context of environmental-induced migration.

3.2 Pacific Small Island Developing States (PSIDS): Tuvalu and the 'sinking islands' issue

Pacific Small Island Developing States (PSIDS) are countries that face severe humanitarian and protection issues, as one of the main repercussions of the rise of global temperatures and climate change. The problem has been recognized under the concept of 'sinking island issues', which represents one of the major causes of vulnerability and discrimination under many circumstances. In particular, it refers to the territory of these islands being 'swallowed' as a consequence of the sea level rise, which will inevitably bring them to disappear. PSIDS are inhabited by a small population of about 1 million people mostly concentrated in urban areas causing problems such as unemployment, overcrowding, and high resource consumption. Moreover, their isolation from the international market, which leads them to have a mostly

[151] WALLACE D. AND SILANDER D., *Climate Change, Policy and Security*, London, Routledge, 2018, pp. 15- 16.
[152] Ivi, pp. 18-20.
[153] Ivi, pp. 20-22.

imported economy, their lack of adequate infrastructures, due to the morphologic nature of the territory, coupled with their limited capacity of transforming natural resources due to the underdevelopment of the manufacturing sector, make their income manly arrive from foreign aids[154].

Tuvalu is constituted of less than 26 km2, divided into nine atolls, and its population counts only 11,000 inhabitants concentrated in the main atoll of Fongafale, which renders it one of the smallest countries in the world[155]. Problematics associated with its territory are twofold: first, its low-elevated character renders the island subject to sea-level rise and coastal erosion; second, its high level of salinization makes it unsuitable for agriculture. Moreover, since freshwater supply depends on precipitations, Tuvalu is also particularly vulnerable to drought and climatic variations. As a consequence, the condition of sanitation is pretty poor, whereas the level of pollution is quite high. Lastly, the morphology of its territory hinders the building of infrastructure to sustain economic activities and adaptation measures[156].

As aforementioned, literature often refers to the PSIDS as 'sinking islands' or as 'disappearing states'; consequently, media have rendered them the main example of what is the idea of climate change-induced movement[157]. However, the Pacific community history has already experienced great mobility, even before the emergence of the climate change issues[158]. Conversely, the issue here is that, while for some people the decision to migrate will be based more on 'push'

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[154] MCADAM J., *Climate Change, Forced Migration, and International Law*, Oxford University Press, United Kingdom, 2012, pp. 121-126. Here, the informations are applied only to the case of Tuvalu.
See also, among others: BOUCHARD C., MARROU L., PLANTE S., PAYE R., AND DUCHEMIN E., *Les Petits États et Territoires Insulaires Face aux Changements Climatiques: Vulnérabilité, Adaptation et Développemen*t, Open Edition Journals, Vol. 10, No. 3, December 2010 available at https://journals.openedition.org/vertigo/10471 [Accessed 8 March 2021].
The term 'swallow' has been extrapolated from the reading of ROY E. A., One Day We'll Disappear: Tuvalu's Sinking Islands, The Guardian Online, May 16th, 2019, available at https://www.theguardian.com/global-development/2019/may/16/one-day-disappear-tuvalu-sinking-islands-risingseas-climate-change [Accessed 8 March 2021].

[155] ROY E. A., *One Day We'll Disappear: Tuvalu's Sinking Islands*, The Guardian Online, May 16th, 2019, available at https://www.theguardian.com/global-development/2019/may/16/one-day-disappear-tuvalu-sinking-islands-rising-seas-climate-change [Accessed 10 February 2021].

[156] SHEN S. AND GEMENNE F., Contrasted Views on Environmental Change and Migration: the Case of Tuvaluan Migration to New Zealand, in *International Migration*, IOM, Vol. 49, No.1, May 19th, 2011, pp. 226-228.

[157] MCADAM J., *Climate Change,* op., cit., p. 122.

[158] FARBOTKO C. AND LAZRUS H., *The First Climate Refugees? Contesting Global Narratives of Climate Change in Tuvalu*, Global Environmental Change, Vol. 22, No. 2, 2012 pp. e382-e390, and MORTEUX C. AND BARNETT J., *Climate Change, Migration, and Adaptation in Funafuti, Tuvalu,* Global Environmental Change, ELSEVIER, April 11th, 2008, pp. 105-106.

factors such environmental disasters, and for others will be based more on 'pull' factors such as economic opportunities, the experience of PSIDS represents one of the rare cases in which people are forced to migrate because of the dissolution of a state due to climate change[159]. As a matter of fact, in June 2009, PSIDS along with some other countries have sponsored a United Nations General Assembly Resolution on Climate Change and its Possible Security Implications, where some delegates have referred to the unprecedented possibility of the disappearance of a whole nation[160]. The President of Micronesia has, therefore, placed the issues into a human rights context stressing its repercussion on security, territorial integrity, and nationality.

The classic international formulation of statehood is contained in the 1933 Montevideo Convention on the Rights and Duties of States[161], according to which a State is formed by four main elements: a defined territory, a permanent population, an effective government, and the capacity to enter into relations with other States. However, the mere absence of one element does not constitute the end of a State[162]. As a matter of fact, Crawford affirmed that a territory that has been once connected to the land and only later submerged by the sea-level rise can continue to be regarded as a connected part of the State territory[163]. Furthermore, although Tuvalu is the third smallest country in the world, as in international law there is no minimum size for territory, the same applies for population. In this sense, the notion of a 'permanent' population means only that it cannot be transitory. Since Tuvalu has a long history of 'outside' population, and this has never affected its ability to continue function as State, the relocation of the majority of its population

[159] MCANANEY S. C., *Sinking Islands? Formulating a Realistic Solution to Climate Change Displacements,* in New York University Law Review, Vol. 87, No. 4, October 2012, p. 1180. International law contemplates only the conventional ways in which a State cease to exist, namely absorption, merge, or dissolution by succession. The two Treaties on State Succession both define this process as "the replacement of one State by another in the responsibility for the international relations of territory. See: UN, *Vienna Convention on Succession of States in Respect of Treaties*, adopted on August 23rd, 1978, and entered into force on November 6th, 1996, Art. 2(1)(b), and *Vienna Convention on Succession of States in Respect of State Property, Archives, and Debts*, adopted on April 8th,1983, not yet in force, Art. 2(1)(a).

[160] UN, General Assembly, Resolution 63/281, Sixty-third Section, *Climate Change and its Possible Security Implications*, June 11st, 2009, available at https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/res%2063%20281.pdf [Accessed 10 February 2021].

[161] OAS, *The Montevideo Convention on the Rights and Duties of States* (Montevideo Convention), Montevideo, December 26th, 1933, entered into force on December 26th, 1934.

[162] MCADAM J., *Climate Change, Forced Migration, and International Law*, Oxford University Press, United Kingdom, 2012, p. 128.

[163] CRAWFORD J., *The Creation of States in International Law*, Oxford, Clarendon Press: Oxford University Press, 1979 p. 46.

would ultimately not constitute a cause for losing the statehood[164]. For what concerns the existence of a government, Crawford stated that one of the features of the exercise of governmental power is its relation to people and properties within a territory[165]. Therefore, in the case of 'disappearing islands' as there is not a competing claim, the continuity of the power would apply[166]. Finally, concerning the last element, the 'sinking islands' would represent a case of 'government in exile', meaning that the operational functions of the State continue to exist even if they cannot be performed within its original territory. Consequently, the State capacity to enter into relations with other States is to be considered effective as long as its functions are not interfered with or controlled by another State so as to preserve its independence[167]. Additionally, if a State stops to exist, its citizens will not necessarily become stateless, as according to the 1954 Convention Relating to the Status of Stateless Persons[168] a stateless person to be recognized as such needs the denial of nationality through the operation of national law, rather than through the mere disappearance of the State. Therefore, even without much territory, PSIDS inhabitants would still be considered citizens by the international community[169]. Moreover, also the 1961 Convention on the Reduction of Statelessness[170] and the UNHCR have a pivotal role in preventing, reducing statelessness, as well as protecting stateless persons.

Finally, the UNHCR during the 2009 Bonn Climate Change Conference has evocated the need for multilateral comprehensive agreements ensuring admittance, status, and rights for PSIDS communities[171]. Whereas the international community is divided up between those that advocate for relocation and those that opposite it, PSIDS have a different approach to this matter. Indeed, Tuvalu fears that industrialized countries may simply think that they can solve the issue of sea-

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[164] MCADAM J., *Climate Change, Forced Migration, and International Law*, Oxford University Press, United Kingdom, 2012, pp. 131-132.

[165] CRAWFORD J., *The Creation of States in International Law*, Oxford, Clarendon Press: Oxford University Press, 1979, p. 55.

[166] MCADAM J., *Climate Change,* op., cit., p. 132.

[167] Ivi, pp. 133-134.

[168] UN, *Convention Related to the Status of Stateless People*, New York, September 28th, 1954, Art. 1 (1), p. 6.

[169] KOLMANNSKOG V., *Climate Change, Environmental Displacement and International Law,* Journal of International Development, John Wiley & Sons, Ltd., November 2012, p. 1074.

[170] UN, *Convention on the Reduction of Stateless,* New York, August 30th, 1961.

[171] UNHCR, *Climate Change and Statelessness: an Overview*, May 15th, 2009 available at https://www.unhcr.org/protection/environment/4a1e50082/climate-change-statelessness-overview.html [Accessed 10 February 2021].

level rise by just relocating the affected populations, instead of acting towards the reduction of GHG emissions.

In conclusion, what is certain is that with the evidence of a direct protection lack, there is the need to extend the interpretation of the current international instruments. Similarly, there is the necessity to go beyond them in order to address the plight of PSIDS, as well as the extreme situation of all the people displaced by environmental change. Unquestionably, the international community is still facing huge challenges in complying with its mission of protecting these people. For this reason, in this chapter, I have introduced the issue of environmental-induced migration by presenting its evolution; first, in the literary discourse, and second, in the jurisprudential one. However, with the consequent impossibility of finding a direct connection between natural hazards and migration flows, I have highlighted the lack of a legal definition for the categorization of people displaced due to environmental change. Finally, I have argued that this phenomenon hits, above all, the most vulnerable people, and regions of the world; consequently, it urges immediate policy responses, which can be based on other sources of law.

CHAPTER 2: THE CURRENT LEGAL FRAMEWORK

1. The absence of a Convention concerning environmental-induced migration

The issue of environmental-induced migration has been introduced in the previous chapter of this study. Starting with a brief overview of the main historical features of the notion of migration, I have made references to traditional international migration flows that followed first, the logic of European colonialism, second, the economic development of the Industrial Revolution, and third, the needs of globalization. In particular, I have highlighted how on the one hand, the recent increase of international migration flows is looking for a global response, and on the other hand, how its policy responses are still incapsulated in a national framework. As a matter of fact, especially the receiving countries have been challenged by irregular and unwanted migration flows, which resulted in the States' choice to categorize migrants. This categorization is divided into two different approaches, namely 'inclusivist' and 'residualist'. From the latter, I have concluded that within the group of migrants exist also other categories: refugees and IDPs, whose legal status has also been analyzed. Additionally, with the introduction of the environmental element in the context of international migration, the international community has been facing a huge debate towards the existence of a direct linkage between environmental disasters and migration, which divided scholars between 'minimalists' and 'maximalists'. Accordingly, I have shown the difficulties encountered in providing a universal legal definition that could enable the protection of people displaced by environmental changes. In this discourse, the juxtaposition of the term 'refugee' is not suitable -even confusing- as it implies the enjoyment of the protection under the 1951 Refugee Convention; however, this is not the case for all the reasons already explained, and for those that will be later investigated. In accordance with this legal protection gap, I have concluded Chapter 1 by underlining the problematics associated with policy responses related to environmental migration in terms of vulnerability, adaptation, and mitigation. Finally, I have exposed the case of the PSIDS and the 'sinking islands issue' phenomenon, which represents one of the major problems that concern both climate change and migration.

The aim of this chapter, dedicated to sources of international law associated with the topic, will be that of outlining all the legal documents (although insufficient) that have a certain relevance with regard to the protection of people involved in movements caused and induced by the

environment. Even though the title of the chapter suggests that there is no Convention concerning this phenomenon, as it was repeatedly mentioned, I will navigate among other instruments of protection. In particular, I will recall the importance of instruments of soft law, whose advantage is that of being "flexible and allow [States] to experiment with new ideas"[172]. Moreover, I will analyze regional conventions and declarations that emerged from the need of addressing specific situations, such as the 2009 Kampala Convention adopted by the African Union (AU) as a result of the necessity of dealing with internal displacements within Africa caused by, among others, natural disasters[173]. Finally, I will introduce the importance of other sources of International Law, in which complementary protection can be found, namely Human Rights Law and Environmental Law[174]. The result of this analysis will be concluded with a consideration reflecting the inadequacy of the current legal protection framework in the context of environmental-induced migration.

2. Existing instruments concerning the 'traditional' migration framework

Movements in the aftermath or prevision of environmental and climate changes represent a normal human adaptation response to these phenomena. However, an issue can arise consequent to the fact that people cannot simply migrate across nations as they wish, because they need to respect specific national immigration laws that may or not allow their entrance. In facts, in international law, States have the obligation of granting protection only to a small category of forced migrants, namely refugees and stateless people, as well as those eligible for complementary protection. Inevitably, international migrants forced to move across borders because of natural and climate change disasters have encountered a normative gap in the international protection system[175].

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[172] KÄLING W. AND SCHREPFER N., *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches,* UNHCR Legal and Protection Policies Research Series, Bern, February 12th, 2012, p. 71.

[173] AU*, African Union Convention for the Protection and Assistance of International Displaced Persons in Africa* (Kampala Convention), Kampala, adopted in October 2009 and entered into force in December 2012, Art. 1 (k) and Art. 4 (f).

[174] This will be the main argument of Chapter 4.

[175] MCADAM J., *Climate Change*, *Forced Migration and International Law*, Oxford, Oxford University Press, 2012, p. 1.

In the absence of a specific international instrument, migrants induced to move because of environmental changes have the same rights and responsibilities as any other migrant crossing borders for any other reason[176]. Therefore, 'environmental migrants' moving as workers will find protection, among others, under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the General Assembly Resolution 45/158 on 18 December 1990[177], which emphasizes the connection between migration and human rights178. In fact, its innovation lies in the fundamental aspect that all migrants should have access to a minimum degree of protection. In its Preamble, the Convention recalls other conventions[179] adopted by the International Labour Organization (ILO), which is the first and oldest UN Agency funded in 1919[180] that has the mandate of advancing social and economic justice, as well as setting international labour standards. Accordingly, the Convention advances the principle of non-discrimination in Art. 1 on the scope and definition of the Convention referring to "*no distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status*"[181]; the same in Art. 7 on non-discrimination with respect to rights by State Parties[182]. Following the same logic, 'environmental migrants' who use irregular means of entry into a country may be covered, among others, by the 2000 Protocol Against the

[176] MARTIN S. F., *International Migration: Evolving Trends from the Early Twentieth Century to the Present*, Cambridge, Cambridge University Press, 2014, p. 219.

[177] UN, High Commissioner for Human Rights, *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, New York, adopted on December 18th, 1990, and entered into force on July 1st, 2003.

[178] Particularly, Part III of the Convention grants a broad series of rights to all migrant workers and members of their families irrespective of their migratory status, many of which are spelled out the International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR).
See: Ibid, Arts. 8-35.

[179] Among others, ILO, *Migration for Employment Convention (Revised*), Geneva, adopted on July 1st, 1949 and entered into force on January 22nd, 1952; ILO, *Convention Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers*, Geneva, adopted on June 24th, 1975 and entered into force on December 9th, 1978; ILO, *Convention Concerning Forced or Compulsory Labour,* Geneva, adopted on June 28th, 1930 and entered into force on May 1st, 1932. See: ILO, Conventions: https://www.ilo.org/dyn/normlex/en/f?p=1000:12000:::NO [Accessed 17 February 2021].

[180] To be more precise, the ILO was funded by the League of Nations, which was replaced by the United Nations after its operational cessation.

[181] See note 177, Art. 1.

[182] Ivi, Art. 7.

Smuggling of Migrants by Land, Sea and Air[183]. Although the act of smuggling a migrant has been recognized as an international crime, according to Art. 5 on criminal liability of migrants, "*migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been [smuggled]*"[184]. Finally, migrants who migrate uniquely for environmental reasons might be able to meet the requirements set forth by the 1951 Refugee Convention and its Additional Protocol. Nonetheless, they must be able to demonstrate to have at least one of the 'protected' characteristics describing a refugee under the Convention, so as to be attributed the related legal status[185]. I will provide an in-depth analysis of the matter in the following paragraph.

However, before beginning the analysis, it is important to remind that migrants moved by environmental disasters, before being considered as a category of migrants, are above all human beings; and as such, they are holders of inviolable human rights. Consequently, means of protection are also to be found in Human Rights Law. This reasoning would apply especially after the recognition that environmental hazards have negative impacts on human lives, as well as negative effects on the enjoyment of fundamental human rights. Therefore, people concerned can avail of the protection of, among others, the right to life[186], the right to seek safety[187], the right to an adequate standard of living[188], and the right to health[189]. Moreover, the widespread consent that human rights norms can be applied on environmental issues has increased a certain international consideration following the report of the former Special Rapporteur Knox on the recognition of the right to a healthy environment as a human rights norm[190]. Its international acceptance would

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[183] UN, Secretary General, *Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crimes,* New York, adopted on December 20th, 2000, and entered into force on January 28th, 2004. The Protocol has been drafted as a supplement to the UN Convention Against Transnational Crimes, adopted under the General Assembly Resolution 15/25 on November 15th, 2000. See: UN, General Assembly, *Convention Against Transnational Organized Crimes*, New York, adopted on November 15th, 2000, and entered into force on September 29th, 2003.

[184] Ibid.

[185] MARTIN S. F., *International Migration: Evolving Trends from the Early Twentieth Century to the Present*, Cambridge, Cambridge University Press, 2014, p. 220.

[186] UN, General Assembly, *Universal Declaration of Human Rights,* Paris, December 10th, 1948, Art. 3.

[187] Ivi, Art. 14 (1).

[188] Ivi, Art. 25 (1).

[189] NINHIRUMA L., *Climate Change Migrants: Impediments to a Protection Framework and the Need to Incorporate Migration into Climate Change Adaptation Strategies*, International Journal of Refugee Law, Vol. 27, No. 1, 2015, p. 117.

[190] UN, General Assembly, Seventy-Third Section, *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/73/188 New York, July 19th 2018, available at

increase the realm of legal protection available for migrants displaced because of environmental degradation, as well as advance the possibility of creating an *ad hoc* protection system based on 'complementary protection'. This concept will be frequently evoked during this chapter, and particularly discussed in Chapter 4.

2.1 The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol

Recalling what has been examined in Chapter 1 in the section dedicated to the study of the refugee definition and the implications of its use, the 1951 Refugees Convention grants protection to internationally displaced persons, but it fails to protect those displaced as a consequence or in the foreseen of natural disasters. As a matter of fact, the Convention and its relative Protocol confer protection only to refugees, who need to satisfy 3 criteria[191]. First, they must be (1) people outside their country of origin[192]; however, as already mentioned in Chapter 1, natural hazards usually hit poor communities that do not have the means for moving across borders and therefore, must displace within the same country. It follows that the first requirement is hard to be satisfied[193]. Second, migrants to be recognized as refugees need to be (2) unable or unwilling to receive protection from their country of origin due to a well-found fear of being persecuted by the same[194]. This requirement implies that the persecutor is within their own State of origin, which can be either the government, an agent of it, or a non-State agent. However, in instances of environmental disasters, it is difficult to advance the claim that 'own State's oppression' is the main cause of natural degradation when the harm has occurred because of a sudden or slow change in the

https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/HealthySustainable.aspx [Accessed 17 February 2021].

[191] TRIANDAFYLLIDOU A., *Handbook of Migration and Globalization*, Cheltenham, Edward Elgar Publishing, 2018, p. 402. This means that a person in order to be recognized as a refugee needs to be able to meet the conditions defined by the 1951 Refugee Convention. Consequently, the recognition of the refugee status is declaratory and not constitutive.

[192] UN, High Commissioner for Refugees, *Convention Relating to the Status of Refugees,* Geneva, 1951, Art. 1 A (2).

[193] MCADAM J., *Climate Change*, *Forced Migration and International Law*, Oxford, Oxford University Press, 2012, p. 43.

[194] See note 192.

environment[195]. Actually, in this context, as highlighted in Chapter 1, part of the problem is to establish whether or not the element of persecution subsists. Moreover, recalling the example of the PSIDS facing the problem of total dissolution because of climate change[196], it is evident that their governments are not responsible for the displacements of their nationals since they are not, for example, developing policies that enhance negative natural impacts on populations. *Au contraire*, PSIDS governments are willing to protect their citizens, but the extent of their ability to do so is limited. It may be argued, instead, that the persecutor is the international community or more precisely those industrialized countries that fail to reduce their amount of GHG emissions, which have consequently caused a rise in global temperatures, hence an increase in global sea levels[197]. However, this may appear too simplistic. Third, refugees' persecution must, without exclusion, arise from five specific elements, thus (3) reasons of race, religion, nationality, membership of a particular social group, or political opinion[198]. It is evident that none of these is relevant or connected in the case of environmental and climate change, unless it is proved that the government or an agent under its control has been intentionally acting with the aim of provoking environmental degradation in areas inhabited by people whose race, religion, nationality, or membership of a particular social or political group is the first reason why the act has been conducted. In this discourse, some scholars have developed the concept of 'government-induced environmental degradation' as a form of persecution, which could eventually fit within the 1951 Convention protection[199]. Accordingly, it has been suggested that episodes such as that of Chernobyl in 1986 and its consequent impacts on the environment have been aggravated by the delay in Soviet government response, as well as by its conduct of disregard to safety and environmental degradation in the quest for nuclear power[200]. Similarly, it has been argued that the

[195] TRIANDAFYLLIDOU A., *Handbook of Migration and Globalization*, Cheltenham, Edward Elgar Publishing, 2018, p. 402. However, the State's oppression may arise, when the relevant authority of a Country deliberately refuses to mitigate or mitigate inadequately environmental impacts. See: KOZOLL C., *Poisoning the Well: Persecution, the Environment and Refugee Status*, Colorado Journal of International Environmental Law and Policy, Vol. 15, No. 2, 2004, pp. 273-274.

[196] See Chapter 1.

[197] MCADAM J., *Climate Change*, *Forced Migration, and International Law*, Oxford, Oxford University Press, 2012, p. 45.

[198] UN, High Commissioner for Refugees, *Convention Relating to the Status of Refugees,* Geneva, 1951, Art. 1 A (2).

[199] WILLIAMS A., Turning the Tide: Recognizing Climate Change Refugees in International Law, in *Law and Policy*, University of Denver, September 2008, Vol. 30, No. 4, p. 508.

[200] COOPER J., *Environmental Refugees: Meeting the Requirements of the Refugee Convention,* New York University Environmental Law Journal, 1998, pp. 514 - 519.

Syrian drought, which occurred between 2010-2015, was exacerbated by the mismanagement of government elites due to poor governance, and unsustainable agricultural and environmental policy responses. This has contributed to political unrest, as well as to an enormous number of migrants displaced towards Europe in search of asylum and refugee protection[201]. Of course, to a certain extent, this would imply a degree of targeted malicious intent by a government or its agents, and an unlikely too extensive interpretation of the 1951 Convention to which would not be accorded much credibility[202].

While some scholars have been referring to people displaced by environmental disasters as 'refugees', this term is a misnomer since it does not find any technical qualification, as well as approval under international law[203]. Moreover, extending any protection under the current international regime depends upon the discretionary willingness of the country that has adopted the 1951 Refugee Convention and its following Protocol[204]. For example, this was the case of the Australian Refugee Review Tribunal (ARRT) and a Kiribati citizen asking for the recognition of refugee protection[205]. The citizen advanced an application to the Tribunal to review the decision of the Minister for Immigration and Citizenship delegate, who has not granted the Australian Protection (Class XA) Visa under Section 65 of the Migration Act 1958[206], which could have enabled the applicant to permanently reside in the country under refugee protection, in view of the impossibility of conducting a safe living in Kiribati due to climate change[207]. The applicant claimed that life in Kiribati was compromised by climate change consequently, citizens have been struggling for their lives. Additionally, he continued that, freshwater sources were in short supply

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[201] KELLEY C., CANE M. A., SEAGER R., AND MOHTADI S., *Climate Change in the Fertile Crescent and Implications of the Recent Syrian Drought,* Proceedings of the National Academy of Sciences, March 2015, pp. 1-2.
[202] WILLIAMS A., Turning the Tide: Recognizing Climate Change Refugees in International Law, in *Law and Policy*, University of Denver, September 2008, Vol. 30, No. 4, p. 508.
[203] MOBERG K. K., *Extending Refugee Definitions to Cover Environmentally Displaced Persons: Displaces Necessary Protection,* Iowa Law Review, Vol. 94, No. 3, 2009, p. 1114.
[204] Ivi, p. 1115.
[205] AUSTLII, *Applicant of Kiribati v. Australian Refugee Review Tribunal (ARRT)*, 0907346 [2009] RRTA 1168, Australia: Refugee Review Tribunal, December 10th, 2009, available at http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2009/20091210_-0907346-2009-RRTA-1168-_decision.pdf [Accessed 23 February 2021].
[206] AUSTLII, Migration ACT 1958 – Sect. 65 Decision to grant or refuse to grant visa, Commonwealth Consolidated Acts: https://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/ma1958118/s65.html [Accessed on 23 February 2021]. Protection Visa (Subclass 866), Australian Government Department of Home Affairs, Immigration and Citizenship: https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/protection-866 [Accessed 23 February 2021].
[207] See note 205.

and that the land was being submerged by the rising of the sea levels[208]. As a consequence, according to the applicant, it was evident that there was no future for him because due to climate change the country was shrinking and there was no perspective for earning a living. As a result of this threat, he was seeking in Australia a shelter to find peace of mind and good health[209]. However, as mentioned before, the decision to extend refugee protection under the 1951 Refugee Convention, in cases regarding environmental displacements, is at the discretion of single Countries. The ARRT acknowledged that:

> The applicant fears return to his country of nationality because there is substantial scientific evidence that rising sea levels will devastate that country. He fears rising sea level will see the further diminution of fresh water for drinking, washing and survival of food crops. He fears ultimately that the country could be completely submerged by sea water and not longer habitable[210].

Although the scientific basis on which the applicant's claim is based, as well as the multiple fears for his life, the ARRT in its reasoning continued that:

> The difficulty with this application in the Tribunal's view, is that the Tribunal does not believe the applicant fears persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion as required by the Refugees Convention. Although it is not necessary that those who would persecute proceed from a basis of malignity, it is well established that persecution within the meaning of the Convention must involves a discriminatory element […][211].

As a consequence of the fact that the Tribunal could not find persecution's grounds under the five terms of the 1951 Refugees Convention, as well as the discriminatory element, the ARRT in its final decision held that:

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[208] AUSTLII, *Applicant of Kiribati v. Australian Refugee Review Tribunal (ARRT)*, 0907346 [2009] RRTA 1168, Australia: Refugee Review Tribunal, December 10th, 2009, para. 16-17.
[209] Ivi, para. 18-20.
[210] Ivi, para. 47.
[211] Ivi, para. 48.

> In this case, the Tribunal does not believe that the element of an attitude or motivation can be identified, such that the conduct feared can be properly considered persecution for reasons of a Convention characteristic as required. […] There is simply no basis for concluding that countries which can be said to have been historically high emitters of carbon dioxide or other greenhouse gases, have any element of motivation to have any impact on residents of low lying countries such as Kiribati, either for their race, religion, nationality, membership of any particular social group or political opinion. Those who continue to contribute to global warming may be accused of having an indifference to the plight of those affected by it once the consequences of their actions are known, but this does not overcome the problem that there exists no evidence that any harms which flow are motivated by one of more of the Convention grounds. While it has been submitted that the applicant can be considered a member of a potential range of social groups, including those from Kiribati, or those from Kiribati who have lost the ability to earn a livelihood or those fleeing their homes for environmental reasons. In the Tribunal's view, this does not assist the applicant, because the Tribunal does not believe that it is possible to identify any agent of persecution who or which can be said to be undertaking actions which harm the applicant for reasons of membership of any particular social group […][212].

In conclusion, even though the applicant could have been accepted as an asylum seeker belonging to a certain social group, namely people who have lost their ability to earn a livelihood, as well as fleeing home for environmental reasons, the ARRT did not recognize the subsistence of the element of persecution represented by high GHG emitter countries, and the intention of these to act against this particular social group. In this respect, it is important to note that jurisprudential experience has not shown yet a more successful outcome with the regard to an extension of the interpretation of the term refugee concerning international protection guarantee.

2.2 The Principle of *non-refoulement*

As stated in Chapter 1, the essential principle of the 1951 Refugee Convention is that of *non-refoulement,* which since the Convention promulgation has developed as a norm of customary

[212] AUSTLII, *Applicant of Kiribati v. Australian Refugee Review Tribunal (ARRT)*, 0907346 [2009] RRTA 1168, Australia: Refugee Review Tribunal, December 10th, 2009, para. 51-52.

international law[213]. The principle of *non-refoulement* is set forth in Article 33 (1) of the 1951 Convention and it reads as follows:

> 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[214].

What can be evinced is that, here, the principle aims at protecting refugee against the return to a risk of persecution based on at least one of the five grounds listed in the Convention. However, the principle of *non-refoulement* is much broader. Indeed, it qualifies as a peremptory norm of international law, hence binding all States and not only those parties to the 1951 Refugee Convention[215]. In this sense, the principle of *non-refoulement* reflects International Human Rights Law and consequently, becomes a principle devoted to the protection of individuals. Indeed, the principle prohibits the removal of any person to a country where a risk of persecution or a serious violation of human rights is present [216]. Additionally, according to the UNHCR Advisory Opinion concerning the extraterritorial application of the principle of *non-refoulement* obligations under the 1951 Convention and its 1967 Protocol, the prohibition of *refoulement* is part of customary international law because it satisfies the two elements required by Article 38 (1) b of the Statute of the International Court of Justice (ICJ), namely states practice and *opinio juris*[217]. Therefore, as

[213] EVANS M. D., *International Law*, 5th Edition, Oxford, Oxford University Press, 2018, pp. 826-827.
[214] UN, High Commissioner for Refugees, *Convention Relating to the Status of Refugees,* Geneva, 1951, Art. 33 (1), p. 30.
[215] See note 213.
[216] CHETAIL V., The Transnational Movement of Persons Under General International Law: Mapping the Customary Law Foundations of International Migration Law in*, Research Handbook on International Law and Migration,* Edward Elgar Publishing, 2014, p. 35.
[217] UN, High Commissioner for Refugees, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, Geneva, 26 January 2007, para 14-15, available at https://www.refworld.org/docid/45f17a1a4.html [Accessed 28 February 2021].

already noted, all States are subjected to it. Finally, the principle is also asserted in Article 3 of the 1984 United Nations Convention against Torture[218].

Similarly, the principle of *non-refoulement* is endorsed by regional instruments, such as, among others, the OAU Convention[219] and the Cartagena Declaration[220]. Conversely, in the case of the European Convention on Human Rights, there is no specific reference to the principle of *non-refoulement*[221]. Nevertheless, even in the absence of a specific provision, an implicit prohibition of the principle can be inferred by treaty bodies, through an extensive interpretation of other major human rights treaties[222]. As a matter of fact, the European Court of Human Rights has a very extensive and meaningful case law about the protection of the removal of aliens from countries where they would risk of being subject to torture. Undoubtedly, it has often stressed that the decision adopted by a State Party to the European Convention to return a person to a country where he or she would face a real risk of being subject to torture, could imply an indirect violation of conventional rights[223]. Therefore, in this case, such a decision would be defined as a violation *par ricochet,* meaning an implicit violation, of Article 3 on the rights of protecting individuals

[218] UN, General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,* adopted under General Assembly Resolution 39/46, New York, signed on December 10th, 1984, and entered into force on June 16th, 1987.

[219] OAU, *Convention Governing the Specific Aspects of Refugee Problems in Africa,* Addis Ababa, September 10th, 1969, Art. II (3).

[220] OAS, *The Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama* (Cartagena Declaration), Cartagena, November 22nd, 1984, Art. 3 (5).

[221] COUNCIL OF EUROPE, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, as amended by Protocols Nos. 11 and 14, supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, November 4th, 1950.

[222] CHETAIL V., The Transnational Movement of Persons Under General International Law: Mapping the Customary Law Foundations of International Migration Law, in *Research Handbook on International Law and Migration,* Edward Elgar Publishing, 2014, p. 36.

[223] EVANS M. D., *International Law*, 5th Edition, Oxford, Oxford University Press, 2018, p. 828.

against torture[224]. Of course, the resort to the use of the protection *par ricochet* can be applied to any risk of loss of life.

Notwithstanding the acknowledgment of the international customary nature of the principle of *non-refoulement,* it is important to underline that it does not constitute a legal basis to ensure permanent residence to persons in the hosting countries. It is true that it allows admission, but only on a temporary basis, thus while the examination of the assessment of the application for international protection is conducted[225]. Once this process will be concluded, international protection will be granted only if the applicant will satisfy the requirements set by the 1951 Convention, especially taking into consideration the five grounds of persecution. Consequently, returning to the study at issue, people displaced as a result of environmental disasters will not benefit of international protection under the principle of *non-refoulement,* as it is difficult to establish the existence of the element of persecution[226].

Nonetheless, recently, the United Nations Human Rights Committee has affirmed that climate change-induced displaced persons asking for international protection, cannot be returned to their home countries if there is substantial evidence that their right to life will be threatened

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[224] O.A., *L'application « par ricochet » de l'article 3 Conv. EDH aux prétendants à l'asile faisant l'objet d'une décision d'expulsion*, Dalloz, November 20th, 2014, available at https://actu.dalloz-etudiant.fr/a-la-une/article/lapplication-par-ricochet-de-larticle-3-conv-edh-aux-pretendants-a-lasile-faisant/h/b657c39b69f0841be32de743f272f61d.html [Accessed 28 February 2021]. The European Court of Human Rights in the judgment of *Soering v. The United Kingdom,* adopted on July 7th, 1989, recognized the protection *par ricochet.* The Court analyzed a case of extradition requested by the government of the United States, where Mr. Soering was accused of capital offense, to the government of The United Kingdom, where he was detained. After the request of extradition, Mr. Soering made an application to the Court alleging that the execution of this extradition's decision would have implied the violation of Article 3 of the European Convention on Human Rights, because he would have been exposed to the risk of being subject of torture in the United States due to the psychological stress and the deterioration undergone by prisoners in the death road. The European Court stressed that the European Convention does not secure the right to not be extradited; however, the decision of a State to extradite a person may give rise to an issue under Article 3 of the European Convention and consequently, may engage the responsibility of this State under the Convention. This is applicable in cases where there are 'substantial grounds' for believing that the person would face a real risk of being subject to torture, in accordance with the United Nations Convention against Torture. Therefore, in this judgement the Court referred to an indirect violation of the European Convention on Human Rights. Finally, the Court also specified that the responsibility is only of the extraditing State at issue, not of the State requesting the extradition. See: ECtHR, *Judgement on Soering v. The United Kingdom,* July 7th, 1989, available at https://www.refworld.org/cases,ECHR,3ae6b6fec.html [Accessed 28 February 2021].

[225] CHETAIL V., The Transnational Movement of Persons Under General International Law: Mapping the Customary Law Foundations of International Migration Law, in *Research Handbook on International Law and Migration,* Edward Elgar Publishing, 2014, p. 40.

[226] KÄLIN W., Conceptualizing Climate-Induced Displacement, in *Climate Change and Displacement, Multidisciplinary Perspectives*, J. MCADAM (ED. BY), Hart Publishing Ltd, United Kingdom, 2012, p. 94.

because of the effects of climate change, as asserted in Article 6 of the International Covenant on Civil and Political Rights (ICCPR)[227]. Accordingly, the climate change factor could challenge *non-refoulement* obligations of the sending State[228]. This was the case of the *Teitiota v. New Zealand* judgment, which represented a real starting point for States to begin considering climate change and environmental elements as evaluating criteria for asylum and refugee claims[229]. Mr Teitiota applied for refugee status in New Zealand explaining that he fled Kiribati because of the threat that climate change, specifically sea-level rise, was posing to his life. The application was judged by the New Zealand's Immigration and Protection Tribunal (IPT) that rejected it. Among the reasons for the rejections, the IPT deemed that: "*while in many cases the effects of environmental change and natural disasters will not bring affected persons within the scope of the Refugee Convention, no hard and fast rules or presumptions of non-applicability exist. Care must be taken to examine the particular features of the case*"; however, the applicant did not objectively face any real risk of persecution if returned to his country of nationality therefore, the IPT rejected the complaint[230]. Subsequently, the applicant appealed the decision to the High Court, Court of Appeal and Supreme Court, which ultimately upheld the initial Tribunal's decision removing both the applicant and his family to Kiribati in 2015. Once exhausted all the domestic remedies, Mr Teitiota decided to fill individually a communication with the United Nations Human Rights Committee under Article 6 of the Optional Protocol to the ICCPR, claiming that New Zealand violated his right to life by

[227] UN, General Assembly, *International Covenant on Civil and Political Rights* (ICCPR), December 16th, 1966, Art. 6, available at https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx [Accessed 28 February 2021].

[228] DELVAL E., *From the U.N. Human Rights Committee to European Courts: Which protection for climate-induced displaced persons under European Law?,* EU Immigration and Asylum Policies: Droit et Politiques de l'Immigration et de l'Asile de l'EU, April 8th, 2020, available at https://eumigrationlawblog.eu/from-the-u-n-human-rights-committee-to-european-courts-which-protection-for-climate-induced-displaced-persons-under-european-law/ [Accessed 28 February 2021].

[229] SINCLAIR-BLAKEMORE A., *Teitiota v New Zealand: A Step Forward in the Protection of Climate Refugees under International Human Rights Law,* Oxford Human Rights Hub: A Global Perspective on Human Rights, January 28th, 2020, available at https://ohrh.law.ox.ac.uk/teitiota-v-new-zealand-a-step-forward-in-the-protection-of-climate-refugees-under-international-human-rights-law/ [Accessed 28 February 2021].

[230] UN, Human Rights Committee, *Ioane Teitiota v. New Zealand* (advanced unedited version), Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016, January 7th, 2020, p. 4, available at https://www.refworld.org/cases,HRC,5e26f7134.html [Accessed 28 February 2021].

forcibly returning him and his family to Kiribati[231]. In 2020, while considering the merits of the complaint at issue[232], the Committee affirmed that:

> The Committee is of the view that without robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights under article 6 or 7 of the Covenant, thereby triggering the non-refoulement obligations of sending states. Furthermore, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized[233].

Therefore, concerning the principle of *non-refoulement,* it is duty of the State Party to allow access to refugee status, to all asylum seekers claiming a real risk of violation of the right to life in the State of origin. Accordingly, each State Party must consider all relevant facts and circumstances including the general human rights situation in the country of origin[234]. Consequently, the Committee underlined that "*environmental degradation, climate change, and sustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life*"[235]. As a matter of fact, the Committee has noted that the IPT and the Supreme Court, in their decisions, both allowed the possibility that the effects of natural disasters could provide a basis for protection, although unsuccessfully.

Taking into account what has been analyzed above, it is important to stress that the Committee's decision emphasized the role of States' responsibility in the field of environmental-induced migration. Indeed, going beyond the case at issue, the ruling appears as a legal warning to the whole international community in providing assistance to countries and people affected by natural hazards. If this responsibility would ultimately fail, individuals might be forced to leave

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[231] UN, Human Rights Committee, *Ioane Teitiota v. New Zealand* (advanced unedited version), Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016, January 7th, 2020, p. 4, available at https://www.refworld.org/cases,HRC,5e26f7134.html [Accessed 28 February 2021].

[232] These will be analyzed in Chapter 3, paragraph 2, in the section dedicated to individuals and their right to bring a claim against a State for instances of Human Rights violations.

[233] See note 231, para. 9.13.
See also para. 9.3.

[234] Ivi, p. 9

[235] Ivi, p. 10.

their habitual place of residence and to incur in human rights violation, which consequently will impose on States the obligation of *non-refoulement.* In order not to be liable under this principle, States must adopt positive measures to protect countries and populations against side effects of environmental changes[236]. Finally, even though the decision of the Committee is not binding, it is still based on an instrument of Human Rights Law, namely the ICCPR, which is, instead, binding. Therefore, the decision could be adopted by other international courts, as well as serving as a significant jurisprudential development in the field of the protection for people displaced as a result of natural catastrophes under a Human Rights regime. Accordingly, although the principle of *non-refoulement* does not grant a permanent residence, its 'complementary' assistance can implicitly derive from other instruments of law.

3. Protection under the notion of 'refugee'

The inapplicability of the refugee definition contained in the 1951 Refugee Convention for instances of environmental-induced migration protection has been already discussed in the previous section of this chapter. Conversely, in this paragraph, I will show that the international community has at its disposal different regional instruments, comprehending both hard and soft law, which provide a wider definition of refugee, in comparison to the 'traditional' one.

Asia and the Pacific region have always been two of the major areas experiencing extreme risks of environmental disasters, both of slow and sudden nature[237]. The factors that render this region of the world particularly vulnerable to natural and climate hazards are numerous and diversified: high-density populations, vast rural areas, coastal zones urbanization, low-lying lands, economic and social insecurity, droughts, floods, and others[238]. In these countries, migration flows are not a new phenomenon and assume both the form of internal and external movements. Nevertheless, the majority of the States of the region are not Parties to the 1951 Refugee

[236] DELVAL E., *From the U.N. Human Rights Committee to European Courts: Which protection for climate-induced displaced persons under European Law?,* EU Immigration and Asylum Policies: Droit et Politiques de l'Immigration et de l'Asile de l'EU, April 8th, 2020, available at https://eumigrationlawblog.eu/from-the-u-n-human-rights-committee-to-european-courts-which-protection-for-climate-induced-displaced-persons-under-european-law/ [Accessed 28 February 2021].

[237] ASIAN DEVELOPMENT BANK (ADB), Climate Change and Disaster Risk Management: https://www.adb.org/what-we-do/themes/climate-change-disaster-risk-management/main [Accessed 3 March 2021].

[238] Ibid.

Convention and its 1967 Protocol[239]. In addition, the lack of a regional binding instrument has brought the Asian-African Legal Consultative Organization (AALCO)[240] to draft the 1966 Bangkok Principles on Status and Treatment of Refugees[241], whose final current text was adopted in 2001[242]. Although being a non-binding document, the Bangkok Principles propose a definition of refugee, which is the result of a long process of drafting and assimilation from other instruments, namely the 1969 AOU Convention and the 1984 Cartagena Declaration[243], which will be further analyzed. In the definition of refugee of the 1966 Bangkok Principles, the most important innovation for the sake of this study is the reference to "*events seriously disturbing public order*"[244]. Indeed, regardless the fact that the UNHCR continues to stress that the notion of 'refugee' should be directly linked to that provided by the 1951 Convention, some scholar argues that this extension could apply to persons displaced because of environmental changes[245]. Thereby, if the occurrence of a natural disaster is such to provoke the displacement of people - disturbing the public order – refugee protection, here, can be granted on the basis of this element. However, the Principles appear somehow restrictive in the recognitions of refugees' rights. As a matter of fact, in the drafting operations, rights and interests of the States Parties had a prevalent role compared to those of people seeking humanitarian protection; even in the recognition of the principle of *non-refoulement*[246]. This choice is the outcome of the experience of Asian and African mass migration

[239] INTERNATIONAL FEDERATION OF RED CROSS (IFRC) AND RED CRESCENT SOCIETIES, *The Legal Framework for Migrants and Refugees: An Introduction for Red Cross and Red Crescent Staff and Volunteer*, Geneva, 2017, p. 13.

[240] Originally known as the Asian-African Legal Consultative Committee (AALCO).

[241] AALCO, *Bangkok Principles on the Status and Treatment of Refugees* (Bangkok Principles), Bangkok, December 31st, 1966, available at https://www.refworld.org/docid/3de5f2d52.html [Accessed 3 March 2021].

[242] 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*, New Delhi, June 24th, 2001, available at https://www.aalco.int/final%20text%20of%20bangkok%20principles.pdf [Accessed 3 March 2021].

[243] OAU, *Convention Governing the Specific Aspects of Refugee Problems in Africa,* Addis Ababa, September 10th, 1969, available at https://www.unhcr.org/about-us/background/45dc1a682/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted.html, and OAS, *The Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama* (Cartagena Declaration), Cartagena, 1984 available at https://www.oas.org/dil/1984_cartagena_declaration_on_refugees.pdf [Accessed 3 March 2021].

[244] See note 242, Art. 1.

[245] KRALER A., CERNEI T., AND NOACK M., *"Climate Refugees", Legal and Policy Responses to Environmentally Induced Migration*, European Parliament, 2011, p. 39.

[246] SEN B., *Protection of Refugees: Bangkok Principles and After,* Journal of the Indian Law Institute, Vol. 34, No. 2, Indian Law Institute, June 1992, p. 189.

inflows, and it shall not be regarded as a hostile act[247]. Finally, even though the protection framework adopted by the Bangkok Principles is wider, as the interpretation of the refugee definition admits also people displaced in situations of public disorder provoked by environmental disasters[248], its applicability is uncertain and surely insufficient in order to face the extreme character of environmental-induced displacements in the region. Despite the existing legal weakness, the issue has been partially addressed with the adoption of some operational frameworks launched by States and specialized agencies. This will be discussed in Chapter 3.

In consideration of what has been explained, also in Africa, there have been efforts to address the issue of environmental displacements within the continent; indeed, in 1969, the States Parties to the then Organization of the African Unity (OAU)[249] signed the OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa[250]. In opposition to the previous document, the OAU Convention is a legally binding regional instrument for all the African Countries that ratified it[251]. Moreover, the OAU Convention is the result of the adaptation to the process of decolonization that the African continent was experiencing since the middle 60s; hence, as a consequence of the high number of Africans escaping from governments' oppression, the process of drawing a new convention had to take into account the peculiar features of the African situation[252]. Therefore, the definition of refugee needed to accept a more 'liberal' meaning, compared to that of the 1951 Geneva Convention, and it reads as follows:

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[247] SEN B., *Protection of Refugees: Bangkok Principles and After,* Journal of the Indian Law Institute*,* Vol. 34, No. 2, Indian Law Institute, June 1992, p. 200.

[248] Moreover, the 1994 Arab Convention on Regulating Status of Refugees in Arab Countries already covers natural disasters if they lead to a serious disruption of public order in its Article 1 (2). However, it has not gained much practical relevance. See: LAS, *Arab Convention on Regulation Status of Refugees in the Arab Countries,* 1994, available at https://www.refworld.org/docid/4dd5123f2.html [Accessed 3 March 2021].

[249] It was disbanded on July 9th 2002, and replaced by the African Union (AU).

[250] OAU, *Convention Governing the Specific Aspects of Refugee Problems in Africa,* Addis Ababa, September 10th, 1969, available at https://www.unhcr.org/about-us/background/45dc1a682/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted.html [Accessed 3 March 2021].

[251] AU, List of the Countries which have signed, ratified/acceded to the Convention Governing the Specific Aspects of Refugee Problems in Africa: https://au.int/sites/default/files/treaties/36400-sl-OAU%20Convention%20Governing%20the%20Specific%20Aspects%20of%20Refugee%20Problems%20in%20Africa.pdf [Accessed 3 March 2021].

[252] IFRC, *The Legal Framework for Migrants and Refugees: An Introduction for Red Cross and Red Crescent Staff and Volunteer*, Geneva, 2017, p. 12.

> 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[253].

As already argued in the discussion of the 1966 Bangkok Principles, the element of "*events seriously disturbing public order*" was significant in the recognition of protection in the context of environmental-induced migration. Moreover, as it can be evinced from the above definition, persecution may also arise from indiscriminate violence, as well as from circumstances of mass displacement, which are features that are missing in the 1951 Refugee Convention. Additionally, unlike for the latter where is necessary to demonstrate the responsibility of a State or an agent of it to be unable or unwilling to provide protection, the 1969 OAU Convention operates in instances of generalized violence; therefore, the effective presence of a persecutor appears unnecessary[254]. That being said, it is important to underline that, however, the 1969 OAU Convention guarantees protection only in the aftermath of an actual event that has caused harm or the displacement of people[255]. Precisely for this reason, it does not advance suitable protection for foreseeable events, such those that could occur in the operate of slow-onset disasters, namely, among others, pollution, sea-level rise, temperature rise, deforestation, and desertification[256]. Nevertheless, it is clear that the 1969 OAU Convention offers a more 'generous' protection for asylum seekers than that provided by the 1951 Refugee Convention, which is what matters for the purpose of this work.

Another fundamental source available in the recognition of refugee protection is the 1984 Cartagena Declaration[257], which is a regional agreement created at the end of the Colloquium on

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[253] OAU, *Convention Governing the Specific Aspects of Refugee Problems in Africa,* Addis Ababa, September 10th, 1969, Art. I (2), p. 3. The same definition can be found in the 1966 Bangkok Principles and in the 1984 Cartagena Declaration.

[254] WOOD T., *Expanding Protection in Africa? Case Studies of the Implementation of the 1969 African Refugee Convention's Expanded Refugee Definition*, International Journal of Refugee Law, Vol. 26, No. 4, December 17th, 2014, pp. 556-559.

[255] See note 253, Art. I (2): "is compelled to leave".

[256] MCADAM J., *Climate Change*, *Forced Migration, and International Law*, Oxford, Oxford University Press, 2012, p. 49.

[257] OAS, *The Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama* (Cartagena Declaration), Cartagena, 1984, available at https://www.unhcr.org/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html [Accessed 5 March 2021].

International Protection for Refugees and Displaced Persons in Central America, Mexico, and Panama, as a result of a huge number of people displaced between the 1960s-1980s consequent to the outbreak of human rights violations, as well as general violence and dictatorship of governments[258]. Unlike the 1969 OAU Convention, it is not binding in nature, hence it does not produce obligations for States; nevertheless, its provisions are respected within Central and South America, and have been incorporated in some national laws and State practice[259]. Moreover, it is considered to be an important contribution in the realm of aliens' protection as it reaffirms the importance of the right to asylum, the principle of *non-refoulement,* and the relevance of finding a durable solution[260]. The definition of 'refugee' contained in the Cartagena Declaration, as already mentioned, builds upon the one of the 1969 OAU Convention, but it adds some new aspects. In particular, part III (3), on the conclusions, states that:

> To reiterate that, in view of the experience gained from the massive flows of refugees in the Central America area, it is necessary to consider enlarging the concept of refugee, bearing in mind, as far as appropriate and in the light of the situation prevailing in the region, the precedent of the OAU Convention (article 1, paragraph 2) and the doctrine employed in the reports of the Inter-American Commission on Human Rights. Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing 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 generalize violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order[261].

[258] IFRC, *The Legal Framework for Migrants and Refugees: An Introduction for Red Cross and Red Crescent Staff and Volunteer*, Geneva, 2017, p. 13.
[259] UN, High Commissioner for Refugee, *Summary Conclusion on the Interpretation of the Extended Refugee Definition in the 1984 Cartagena Declaration,* Montevideo, July 7th, 2004, available at https://www.unhcr.org/protection/expert/53bd4d0c9/summary-conclusions-interpretation-extended-refugee-definition-1984-cartagena.html [Accessed 5 March 2021].
[260] Ibid.
[261] OAS, *The Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico, and Panama* (Cartagena Declaration), Cartagena, 1984, para III (3).

As it can be evidenced, similarly to the 1969 OAU Convention, the above definition makes references to general violence and circumstances that disturb seriously the public order, as well as the fact that these must have already occurred at the time of examining the protection claim. Consequently, this represents a limitation for instances of slow-onset natural disasters. However, the peculiarity of the 1984 Cartagena Declaration derives from the fact that it introduces the component of violation of human rights as a ground to seek refugee protection[262], which is extremely important. As a matter of fact, although Human Rights Law does not guarantee for asylum seekers either the right to enter or to stay, as well as the content of refugee protection, it does 'open the doors' for a basis of complementary protection[263]. Undoubtedly, in this discourse, international human rights law offers a unique advantage for asylum seekers, because the latter may avail of a large number of treaties with an extensive scope, a wider provisions' applicability and finally, the potential of emphasizing the human rights dimension in matters of environmental and climate disruptions. In this sense, Human Rights Law may become the bedrock of migration governance, as well as an instrument to serve specific needs in the context of environmental-induced migration[264]. However, if natural hazards' provisions do not figure explicitly[265], it appears evident the necessity of creating global reliable guidance on how to apply human-rights based complementary protection in the field of environmental-induced migration[266]. At the same time, it is necessary to raise more global awareness towards civil society. I will consider this topic in Chapter 3.

To summarize, it can be said that, to a certain extent, the notion of 'refugee' has experienced an evolution, which, however, is mainly encapsulated in a regional context. What is certain is that these instruments serve as a legal basis for extending international law towards the rights of people internationally displaced because of natural events. Similarly, another critical gap

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[262] AMERA International, *The Cartagena Declaration*, Rights in Exile Programme: https://www.refugeelegalaidinformation.org/cartagena-declaration-refugees [Accessed on 5th March 2021].

[263] KOLMANNSKOG V., *Climate Change, Environmental Displacement and International Law,* Journal of International Development, pp. 1071-1081, John Wiley & Sons, Ltd., November 2012, p. 1078.

[264] FERRIS E. AND BERGMANN J., *Soft law, Migration and Climate Change Governance,* Journal of Human Rights and the Environment, Vol. 8 No. 1, March 2017, p. 20.

[265] For example, the Finnish government has adopted a legally binding national measure in terms of environmental-induced protection by clearly mentioning the element of 'environmental disaster' as a ground for granting temporal status to refugees. See: Ministry of Interior of Finland, *Aliens Act, (301/2004, amendments up to 1152/2010 included*) 2004, Sec. 109, p. 39.

[266] See note 264.

is that concerning the relation between internally displaced people (IDP) and environmental change. This will be the subject of the next paragraph.

4. Protection of Internally Displaced Persons (IDPs): towards the necessity of creating a new legal protection framework

Heretofore, I have deeply discussed the problems and challenges of the current legal protection system mainly focusing on people crossing national borders because of environmental disasters. However, in Chapter 1, I have also argued that environmental hazards hit frequently the most vulnerable areas and people of the world, that have the least capabilities to respond to natural disasters in terms of moving and seeking protection in another country. At this point of the analysis, it is evident that as these people are forced to displace within their own country, they cannot avail of refugee protection under the 1951 Refugee Convention and the other instruments analyzed. For this reason, IDPs have a specific legal regime. The latter, according to some scholars[267], could serve as a starting point for the implementation of a legal protection framework concerning 'environmentally displaced persons' in light of the limited applicability of the current one[268]. More precisely, it has been asserted that this regime could apply specifically to environmental-induced migration because the description of IDPs includes persons who have been forced or obliged to flee or leave their homes also as a result of, among others, natural disasters[269].

[267] See, among others: WILLIAMS A., Turning the Tide: Recognizing Climate Change Refugees in International Law, in *Law and Policy*, Vol. 30, No. 4, pp. 502-529, University of Denver, September 2008; MCADAM J., Climate Change Displacement and International Law: Complementary Protection Standards, Division of International Protection, United Nations High Commissioner for Refugees, May 2011, p. 55, and *Creating New Norms on Climate Change, Natural Disasters and Displacement: International Developments 2010–2013,* Environmental Induced Displacement and Forced Migration, Vol. 29, No. 2, pp. 11-26, Refugee: Canada's Journal on Refugees, February 26th, 2014; and GEMENNE F. AND BRÜCKER P., *From the Guiding Principles on Internal Displacement to the Nansen Initiative: What the Governance of Environmental Migration Can Learn From the Governance of Internal Displacement,* pp. 345- 263, International Journal of Refugee Law, Vol. 27, No. 2, May 10th, 2015.

[268] KRALER A., CERNEI T., AND NOACK M., *"Climate Refugees", Legal and Policy Responses to Environmentally Induced Migration*, European Parliament, 2011, p. 41. See: UN, High Commissioner for Refugees, *Guiding Principles on Internal Displacement,* (E/CN.4/1998/53/Add.2) 1998, p. 1.

[269] Ivi, p. 41.

In 1998, outside of the conventional 'States-gathering', the Guiding Principle on Internal Displacement have been launched[270]. In response to the urgency for global humanitarian assistance in the realm of internal displacements that started at the beginning of the 1990s, numerous NGOs and civil society pushed the then UN Secretary General Boutros to act. The later nominated Francis Deng under the role of Special Representative for IDPs in 1992, and alongside with the Commission for Human Rights decided to create an *ad hoc* system of protection: the Guiding Principles on Internal Displacement, which have been approved in 1998[271]. As briefly mentioned in Chapter 1, the Principles are not binding in international law, but over the years they became part of the body of customary international norms, especially because of their incorporation into some countries' regional and national systems, their reflection in both International Human Rights and Humanitarian Law, as well as their references by the UN Security Council and the General Assembly[272]. Similarly, they provide guidance to the Human Rights Council's Special Rapporteur, as well as the basis for the Inter-Agency Standing Committee (IASC) Framework on Durable Solutions for Internally Displaced Persons[273]. Although they do not confer a specific status for IDPs, they provide specific protections that are relevant in the context of internal displacements. In particular, they recognize the duty of national and international actors in preventing and avoiding all conditions leading to general displacements of persons by giving them full responsibility[274]. Moreover, they also entitle IDPs to a set of civil, socio-economic, cultural, and political rights during the phase of displacement. Finally, they introduce the innovation of envisaging the possibility of voluntary return or resettlement within the country, assigning the authorities the management of informative and participative procedures so as to facilitate their reintegration[275].

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[270] See: EVANS M. D., *International Law*, 5th Edition, Oxford, Oxford University Press, 2018, p. 825, note 89. See: UN, High Commissioner for Refugees, *Guiding Principles on Internal Displacement,* (E/CN.4/1998/53/Add.2) 1998.

[271] GEMENNE F. AND BRÜCKER P., *From the Guiding Principles on Internal Displacement to the Nansen Initiative: What the Governance of Environmental Migration can Learn from the Governance of Internal Displacement*, International Journal of Refugee Law, Vol. 27, No. 2, May 10th, 2015, p. 247.

[272] EVANS M. D., *International Law*, 5th Edition, Oxford, Oxford University Press, 2018, p. 825.

[273] Ibid.

See also: KRALER A., KATSIAFICAS C., AND WAGNER M., Climate Change and Migration, Legal and Policies Challenges and Responses to Environmentally Induced Migration, European Parliament, July 2020, p. 45.

[274] Ibid.

[275] MCADAM J., *Climate Change*, *Forced Migration and International Law*, Oxford, Oxford University Press, 2012, pp. 250-252.

The decision to create an instrument of soft law was favoured for various reasons, which included the necessity of a rapid solution, and the avoidance of making political compromises that could have undermined the primary scope of the Principles. The voluntary nature of the Guiding Principles indeed means that they are binding only if States incorporate them; nonetheless, in this way governments have at their disposal high flexibility from the perspective of the application of the provisions; such as in terms of timing and the extent of implementation. Accordingly, more targeted policies will be able to effectively address local necessities[276]. Ultimately, the Principles do not create any new form of international law imposing neither obligations nor responsibilities to States; conversely, they organize and consolidate existing provisions of international human rights law and humanitarian law in a single framework, which describe commitments that national governments have already undertaken by adhering to previous international treaties. Precisely for these reasons, the 1998 Guiding Principles have been widely accepted and incorporated into national and regional legislation[277]. In this regard, I wish to recall the aforementioned 1994 OAS San José Declaration on Refugees and Displaced Persons, which was drawn for the occasion of the anniversary of the 1984 Cartagena Declaration on Refugees extending the protection of IPDs from a national to an international framework[278].

Similarly, I would like to bring back the 2009 Kampala Convention[279] established by the African Unity, which represents the first world binding regional treaty concerning internal displacements; therefore, successfully embodying the instructions of the 1998 Guiding Principles. Its importance arises from the fact that, for the first time, climate change and relative natural disasters have been acknowledged as direct drivers of displacements. Indeed, the Convention defines displaced persons as:

[276] SOLOMON M. K. AND WARNER K., Protection of Persons Displaced as a Result of Climate change: Existing Tools and Emerging Frameworks, in *Threatened Island Nations: Legal Implications of Rising Seas and a Changing Climate,* GERRARD M. AND WANNIER G. (ED. BY), Cambridge, Cambridge University Press, February 2013, p. 264.
[277] Ivi, p. 265.
[278] OAS, *San Jose Declaration on Refugees and Displaced Persons,* San Jose, December 7th, 1994. See Chapter 1, para. 1.1.
[279] AU*, African Union Convention for the Protection and Assistance of International Displaced Persons in Africa* (Kampala Convention), Kampala, October 2009, entered into force in December 2012; see also Arts. 1 (k) and 4 (f).

> 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[280].

The definition mirrors the one contained in the Introduction of the 1998 Guiding Principles; however, what matters here is that the same definition has been included in a formal document that sets obligations and responsibilities for States that adopt it[281]. As a matter of fact, State Parties to the 2009 Convention are required to provide warning system, develop disaster risks reduction strategies, and assist IDPs in the aftermath of natural disasters [282]. Accordingly, States are liable of making reparations to IDPs for damages resulted by the avoidance of protection and assistance in climate change instances[283].

Finally, the 1998 Guiding Principles have also provided guidelines for operational actions, namely, among others, the Operational Guidelines on the Protection of Persons in Situations of Natural Disasters and the Guidance on and Operational Guidelines for Planned Relocations[284]. The first has been drafted under the initiative of the Representative of the Secretary General on the Human Rights of the Internally Displaced Persons, consequent to the 2004 Indian Ocean tsunami. He presented his draft to the Inter-Agency Standing Committee (IASC) on the Protection of Persons in Natural Disasters, which finally adopted it in 2010. The Operational Guidelines lay out the guidance for a human-rights led humanitarian action in the aftermath of environmental disruptions. They reaffirm the primary role of States to provide assistance and to avoid

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[280] AU*, African Union Convention for the Protection and Assistance of International Displaced Persons in Africa* (Kampala Convention), Kampala, October 2009, entered into force in December 2012, Art. 1 (k).
[281] FERRIS E. AND BERGMANN J., *Soft law, Migration and Climate Change Governance,* Journal of Human Rights and the Environment, Vol. 8 No. 1, March 2017, p. 15.
[282] At the same time, it is also fundamental to remember the peculiar role that the civil society can play through actions aimed at supporting the implementation and the ratification of the Kampala Convention. In this regard, see: AU, Economic, Social and Cultural Council (ECOSOCC), *Making the Kampala Convention Work for IDPs: Guide for Civil Society on Supporting the Ratification and the Implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa,* Addis Ababa, July 2020.
[283] FERRIS E. AND BERGMANN J., *Soft law,* op., cit., p. 16.
[284] IASC, Operational Guidelines on the Protection of Persons in Situations of Natural Disasters, Brookings, University of Bern, January 2011 available at https://interagencystandingcommittee.org/meeting-humanitarian-challenges-urban-areas/documents-public/iasc-operational-guidelines-protection, and UN, High Commissioner for Refugees, *Guidance on Protecting People From Disasters and Environmental Change Through Planned Relocation (Guidance on Planned Relocation)*, October 7th, 2015, available at https://www.refworld.org/publisher,UNHCR,THEMGUIDE,,596f15284,0.html [Accessed 7 March 2021].

discrimination to those affected by natural hazards, as well as the guarantee of the enjoyment of the same rights and freedoms under Human Rights Law. Moreover, on the same level as the 1998 Guiding Principles, the Operational Guidelines have served to raise awareness of the importance of using a human rights approach in disaster response[285]. However, the Guidelines provide operational guidance only to a specific category of people affected by natural disasters, namely those affected by sudden-onset disasters. For this reason, it was recognized a gap concerning displacement induced by slow-onset disasters. Consequently, experts and representative of IOs and governments have gathered in 2015 and drafted the Guidance on Protecting People through Planned Relocations from Disasters and Environmental Change, which is the second instrument that I have previously mentioned. Differently from the first, the Guidance has been intended to be used when planned relocation is necessary in order to protect people because of environmental changes, including the foreseeable effects of these. Finally, they also address problems related to restoring livelihoods and on how to secure financial resources needed for planned relocation[286].

In any case, what is relevant for this study is that both the Guidance and the Operational Guidelines, as well as the 1998 Guiding Principles, are efforts to use soft law in order to address the legal gap present in the applicability of the normative framework concerning people forced to move because of both sudden and slow-onset natural disasters and changes. In fact, as already asserted, they build upon existing hard and soft law sources. However, the real challenge consists in the engagement of States and operational actors in order to divulge them so as to obtain wider acceptance at the international level[287]. Even though they do not cover every possible pattern regarding environmental-induced migration, as well as the fact that they address only internal displacements, these instruments are demonstrating to serve as a legitimate starting point for the involvement of States in the promotion of a human-rights based protection approach also towards people forced to displace because of environmental changes[288]. It is in this context that the most desirable outcome would be that, over time, these non-binding instruments could build new norms

[285] FERRIS E. AND BERGMANN J., Soft law, Migration and Climate Change Governance, Journal of Human Rights and the Environment, Vol. 8 No. 1, March 2017, p. 17.
[286] Ivi, pp. 17-18.
[287] Ivi, p. 18.
[288] NINHIRUMA L., *Climate Change Migrants: Impediments to a Protection Framework and the Need to Incorporate Migration into Climate Change Adaptation Strategies*, International Journal of Refugee Law, Vol. 27, No. 1, 2015, p. 115.

of customary international law out of *ad hoc* national and regional policy initiatives[289]. The Nansen Initiative sets a perfect example of state-led engagement, which will be discussed in Chapter 3.

5. The limited effect of International Agreements in the context of environmental-induced migration: envisaging a new legal protection framework

In light of what has been analyzed in this chapter, it is evident that the existing legal protection framework at both the international and regional level is inefficient in addressing the issue of internationally and internally environmental-induced migration. Moreover, although the augmentation of supranational documents concerning, among others, the environment, asylum seekers, and IDPs, it is undeniable that the problem of people compelled to move because of environmental changes is still far to be explicitly covered by International Law[290]. Therefore, this study argues that the alternative of benefitting from complementary protection, as well as from creating a new *ad hoc* framework would be the most suitable choices at the moment; especially, in the consideration of the urgency needed towards concrete action. Consequently, I will now assess the endeavours conducted by academics and the international community in this regard.

At present, the majority of the problems caused by environmental changes have been dealt by the Conference of the Parties (COPs), which is the supreme decision-making body of the United Nations Framework Convention on Climate Change (UNFCCC)[291]. The UNFCCC represents the highest legal framework to which States can refer for matters concerning international climate action. However, it was only in the aftermath of the COP16[292], in 2010, that a concrete response

[289] WILLIAMS A., Turning the Tide: Recognizing Climate Change Refugees in International Law, in *Law and Policy*, Vol. 30, No. 4, University of Denver, September 2008, p. 512.

[290] COURNILL C. AND GEMENNE F., *Les Populations Insulaires Face au Changement Climatique: des Migrations à Anticiper,* Vertigo, La Revue Électronique en Science de l'Environnement, Vol. 10, No. 3, December 2010, p. 13.

[291] UN, *United Nations Framework Convention on Climate Change*, Rio de Janeiro, May 9th, 1992, and entered into force on March 21st, 1994. It has been underlined that the year of 1992 represents one of the most important stages of the development of International Environmental Law. This, in consideration of the fact that for the first time a holistic approach to environmental and economic development protection has been adopted, which gave the birth to the concept of Sustainable Development. As a matter of fact, this was the theme towards which the 1992 Rio Conference on Environment and Development has been held. One of the major UN treaties established at the end of the Conference was the 1992 UNFCCC, together with the 1992 Convention on the Conservation of Biological Diversity. See: EVANS D. M., *International Law*, 5th Edition, Oxford, Oxford University Press, 2018, pp. 677–679.

[292] UN, *United Nations Framework Convention on Climate Change*, Cancún, December 10th, 2010.

has been provided in the context of environmental-induced migration, as well as in that of climate change[293]. The Cancún Adaptation Framework symbolized a fundamental momentum in the legitimization of environmental displacements, as it held the primacy in recognizing human mobility as an adaptation strategy to climate change and natural hazards. Furthermore, it gave the possibility to reach at the international level the potential financing required for establishing mobility-adaptation strategies and measures. In addition to that, the Cancún Conference also led to the creation of a Technical Advisory Group on Climate Change and Human Mobility, which helped to forge a new approach in the field of natural displacements. Finally, thanks to this new approach, matters such as migration, displacement and relocation took more visibly the stage of international negotiations. Indeed, all the State Parties to the UNFCCC had a representative seat in the COPs, whereby they reviewed and adopted the actions undertaken by the UNFCCC[294]. A more critical discussion on this subject will be provided in Chapter 3.

Despite the innovation brought by the UNFCCC, currently, States have not yet committed to any international binding obligation. Similarly, as already repeated, the international community is still lacking a recognized institution or organization holding a clear mandate to protect people obliged to move because of natural changes, as well as of a powerful 'voice' able to take the lead for creating a legal regime in this context[295]. Another critical point concerns the extent to which the approach of the regime should be built on. In other words, whether international protection should be provided by a binding or non-binding regime[296]. In this discourse, it is important to highlight the difference between the two types. On the one hand, treaties produce enforceable legal remedies, and they ensure the fulfilment of normative gaps; on the other hand, they are built upon consensus, which if missing leads to long-term negotiations, as well as to ratification gaps. Conversely, a soft-law approach, even though it does not produce legal obligations, it allows States to balance their moral and political interests with the necessity of creating norms in order to govern

[293] FERRIS E. AND BERGMANN J., *Soft law, Migration and Climate Change Governance,* Journal of Human Rights and the Environment, Vol. 8 No. 1, March 2017, p. 22, and FRUTTALDO A., *Climate-Induced Migration and International Law: Assessing the Discursive Legal Construction of Climate Refugees,* Anglistica AION Vol. 21, No. 2, January 2017, p. 77.
[294] Ivi, p. 80.
[295] KÄLING W. AND SCHREPFER N., *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches,* UNHCR Legal and Protection Policies Research Series, Bern, February 12th, 2012, p. 68.
[296] Ivi, p. 69.

international issues[297]. For this reason, Thürer affirmed that States favour soft-law norms as they "*want to create a modus vivendi, to guide their international behaviour in a flexible way"*[298]. Finally, soft-law may have the characteristic of restating existing norms, as showed in the case of the 1998 Guiding Principles, as well as the peculiarity of serving as a precursor of hard-law norms, such in the case of the 1967 Declaration on the Elimination of Discrimination against Women, which eventually became the Convention on the Elimination of All Forms of Discrimination against Women in 1979[299].

The unsuccessful States' attempts in finding a solution for the issue of environmental-induced migration left the stage for proposals advanced by different scholars and experts in the field[300]. Undoubtedly, the first example that I will discuss is the Draft Convention on the International Status of Environmentally-Displaced Persons (EDPs)[301] elaborated by the *Centre de Recherches Interdisciplinaires en Droit de l'Environnement de l'Aménagement et de l'Urbanisme* (CRIDEAU) and the *Centre de Recherche en Droit Public* (CRDP), which up to nowadays represents the most complete work. The 2008 Draft Convention in its Article 2 (2) advances the definition of 'environmentally-displaced persons', which are identified as *"individuals, families and populations confronted with a sudden or gradual environmental disaster that inexorably impacts their living conditions and results in their forced displacement, at the outset or throughout, from their habitual residence and requires their relocation and resettlement"*[302]. Its completeness derives from the fact that the Draft Convention institutes a specific status, which applies for both sudden and slow-onset disasters, temporary and permanent displacements, which can be either internationally and internally, as well as for relocation and resettlement[303]. Consequently, it is

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[297] KÄLING W. AND SCHREPFER N., *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches,* UNHCR Legal and Protection Policies Research Series, Bern, February 12th, 2012, p. 71.

[298] THÜRER D., *Soft Law*, in Max-Planck Encyclopedia of International Law, Oxford University Press Online, para. 2 (6), available at https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1469?rskey=xwBCNf&result=1&prd=MPIL [Accessed 11 March 2021].

[299] UN, United NaGeneral Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, New York, December 18th, 1979, and entered into force on September 3rd, 1981.

[300] KRALER A., CERNEI T., AND NOACK M., *"Climate Refugees", Legal and Policy Responses to Environmentally Induced Migration*, European Parliament, 2011, p. 43.

[301] CRIDEAU AND CRDP, *Draft Convention on the International Status of Environmentally-Displaced Persons*, Revue Eruopéenne de Droit de l'Environnement No. 4, pp. 395-406, Limoges, December 2nd, 2008, available at https://www.persee.fr/doc/reden_1283-8446_2008_num_12_4_2058 [Accessed 11 March 2021].

[302] Ivi, p. 397.

[303] Ivi, pp. 395-406.

evident that the realm of applicability appears wider and more precise than that provided by current instruments. Moreover, the Draft Convention recalls fundamental principles of Environmental Law, such as that of common but differentiated responsibilities, proximity, and proportionality[304]. Chapter 2 of the Draft Convention lists rights[305] specifically guaranteed to 'environmentally-displaced persons' (Art.1), such as, among others, the right to water, food and health care, legal personality, work, nationality and to return, which was also present in the 1998 Guiding Principles. Finally, the Draft Convention also grants the principle of non-discrimination, the appointment of specific institutions and agencies to which make reference, and an implementation mechanism to perform the protection[306]. Although the 2008 Draft Convention has not been concretized yet, it is fundamental to acknowledge its value and its scope, namely the development of collective responsibility towards environmental disasters. Indeed, its ultimate scope is to urge strong cooperation between people and nations in the respect of inviolable human rights[307].

Alongside the 2008 Draft Convention, there have been other academics' initiative to produce a binding treaty, such as that of Véronique Magniny[308], Gregory McCue[309], Dana Zartner Falstrom[310], Bonnie Docherty and Tyler Giannini311, and others. However, it seemed that the main disagreement stemmed from the lack of political will in realizing a durable protection

[304] CRIDEAU AND CRDP, *Draft Convention on the International Status of Environmentally-Displaced Persons*, Revue Eruopéenne de Droit de l'Environnement No. 4, pp. 395-406, Limoges, December 2nd, 2008, p. 398. However, these principles are, here, applied in the realm of environmental-induced migration.

[305] The rights are inspired by already existing refugee and human rights, which however are derived from Human Rights, Humanitarian, and Environmental Law.

[306] CRIDEAU AND CRDP, *Draft Convention,* op., cit, pp. 399-404.

[307] PRIEUR M., *Draft Convention on the International Status of Environmentally-Displaced Persons*, UNFCCC, 2008, p. 10, available at https://unfccc.int/files/adaptation/groups_committees/loss_and_damage_executive_committee/application/pdf/prieur-convention_on_the_international_status_of_environmentally.pdf [Accessed 11 March 2021].

[308] MAGNINY V., *Les Réfugiés et l'Environnement: Hypothèse Juridique à propose d'une Menace Écologique*, Paris, Université Paris I Panthéon-Sorbonne, 1999.

[309] MCCUE G., *Environmental Refugees: Applying International Environmental Law to Involuntary Migration*, Georgetown International Environmental Law Review, Vol. 6, No. 151, 1993.

[310] ZARTNER FALSTROM D., *Stemming the Flow of Environmental Displacement: Creating a Convention to Protect Persons and Preserve the Environment*, Colorado Journal of International Environmental Law and Policy, January 2002.

[311] DOCHERTY B. AND GIANNINI T., *Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees,* pp. 349-403, Harvard Environmental Law Review, 2009.

solution considering, among others, the implementation of the principle of burden sharing[312]. Consequently, a binding convention is not going to be the answer to the issue at study[313].

Conversely, Biermann and Boas in 2010 have advocated for the addition of an optional Protocol to the UNFCCC. In particular, they advanced the proposal of creating a new *sui generis* protection regime that would cover the recognition, protection and resettlement of 'environmental migrants' suggesting five main principles[314]:

(1) The Principle of Planned Relocation and Resettlement, which implies the planification of long-term resettlement, underlining the change of not relying on emergency responses;

(2) The Principle of Resettlement Instead of Temporary Asylum, which underlines the fact that most environmentally displaced will not be able to return to their place of departure;

(3) The Principle of Collective Rights for Local Population, which considers in general areas affected by climate change, highlighting a communal approach;

(4) The Principle of International Assistance for Domestic Measures, which proposes to support national governments and local communities in protecting and financing people and their resettlement with their territory, as the majority of movements is internally;

(5) The Principle of International Burden-sharing, which recalls that climate change is a global concern and therefore, it requires global responsibilities; especially, by the most industrialized countries[315];

Biermann and Boas clearly reckon that through the application for these principles more political support would be reached, and therefore, it would be more effective to add an optional Protocol to the UNFCCC, rather than to create a new convention, as their colleagues proposed. Additionally, they envisage a strong role played by an executive committee tasked with

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[312] It is a subset of international cooperation in which States take on responsibility for refugees who, in terms of international refugee law, would fall under the protection of other States or assist other States in fulfilling their responsibilities. See: NEWLAND K., *Cooperative Arrangements to Share Burdens and Responsibilities in Refugee Situations short of Mass Influx,* United Nations High Commissioner for Refugees Discussion Paper, Amman, June 28th, 2011, p. 1.

[313] KRALER A., CERNEI T., AND NOACK M., *"Climate Refugees", Legal and Policy Responses to Environmentally Induced Migration*, European Parliament, 2011, p. 44.

See also: MCADAM J., *Refusing 'Refugee' in the Pacific: (De)constructing Climate-Induced Displacements in International Law,* pp. 102-137, Migration and Climate Change, E. Piguet, A. Pécoud, and P. De Guchteneire (eds.), Paris, UNESCO, 2011.

[314] BIERMANN F. AND BOAS I., *Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugee*, pp. 60-88, Global Environmental Politics, Vol. 10, No. 1, February 2010.

[315] Ivi, pp. 75-76.

administrative and coordination duties, which would work alongside a scientific advisory body. Nevertheless, the concrete implementation would be delegated to existing UN agencies. Finally, they also suggest cooperation with other international agencies and organizations[316].

Nonetheless, as mentioned at the beginning of this paragraph, discussions concerning climate change have always been part of the UNFCCC negotiations especially, during the Cancún Conference in 2010, which generated the Cancún Adaptation Framework[317]. As a matter of fact, Part II, on enhanced action on adaptation, all State Parties are invited to follow *"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"*[318]. Additionally, another solution would be that of temporary protection, which, however, will be discussed in Chapter 4.

In conclusion, what can be evinced from the analysis of this chapter is twofold. First, the acknowledgement of a legal vacuum with regard to the explicit protection of people in the context of environmental-induced migration; second, the direct inadequacy of existing instruments, namely, among others, the 1951 Refugee Convention, the principle of *non-refoulement*, and the protection under the different interpretations of refugee. Consequently, as I have argued, States have tried to build a framework, which is, however, incapsulated in a system based on voluntary adoption. Similarly, experts have tried to offer unprecedented protection through the draft of some conventions and additional protocols. The result of this chapter leads to the conclusion that the most successful outcome towards the protection of 'environmentally-induced migrants' would be that granted under 'complementary protection'. As demonstrated, this approach appears more theoretical than practical. However, I will argue about my assumption in Chapter 4.

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[316] BIERMANN F. AND BOAS I., *Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugee*, pp. 60-88, Global Environmental Politics, Vol. 10, No. 1, February 2010, pp. 77-81. It is also worth to mention that some scholars have conceived a convention specifically for people displaced by climate change. See: HODKINSON D., BARTON T., DAWKINS S., YOUNG L., AND CORAM A., *Towards a Convention for Persons Displaced by Climate Change: Key Issues and Preliminary Responses,* IOP Conference Series: Earth and Environmental Science, Vol. 6, No. 56, IOP Science, 2009.

[317] UN, Framework Convention on Climate Change, *Report of the Conference of the Parties held in Cancun from 29 November to 10 December 2010,* Sixteenth Session, Addendum, Part Two: Action taken by the Conference of the Parties, Cancún, March 15th, 2011.

[318] Ivi, Art. 14 (f).

CHAPTER 3: ACTORS

1. States

After having analyzed the international legal system of protection invoked for instances of environmental-induced migrations and underlined its inapplicability for the case at issue, in this chapter I would like to focus on the actors concerned, and on their role. In particular, I will draw my attention to States, International Organizations (IOs), Transnational Corporations (TNCs), and NGOs, which I reckon have contributed, willingly or unwillingly, positively or negatively, to the development of the phenomenon of environmental-induced migration. For this reason, on the one side, I will emphasize the important involvement of some actors towards the active implementation of measures concerning migratory accessibility, protection, and relocation assistance, as well as awareness and resilience building; on the other side, I will show how other actors have operated towards a divergent direction by denying the occurrence of environmental degradation and by exploiting the most vulnerable environments with the unique aim of following their own profits. Finally, a part of this chapter will also be dedicated to the individuals, who represents those actors suffering the most; indeed, as a consequence of the natural deterioration of their habitual place of residence and the events caused by climate change are forced to move both within and across-borders.

While progressing with the analysis, I will employ the significant example set by New Zealand, which has been responding to migratory flows coming from the Pacific area, frequently stemming from environmental disasters and climate change cases. As a matter of fact, I will argue that the State of New Zealand, having experienced several cases of asylum's applications attributed to climate change, has proved to be a pioneer in the field as well as a model to follow for other developed countries. In this aspect, I will focus on the establishment of 'The Pacific Reset', which aims at the bilateral partnership between New Zealand and the Islands of the Pacific Region. Similarly, I will debate on other States' operational actions aimed at creating a more effective impact with a state-led, bottom-up approach to the phenomenon at study, such in the case of the Nansen Initiative Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (Protection Agenda)[319]. Notably, the initiative has identified a wide

[319] THE NANSEN INITIATIVE, Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change: https://disasterdisplacement.org [Accessed 19 April 2021].

range of assistance measures for migrants displaced due to environmental changes, which do operate from the issuance of visas to the issuance of work permits. Conversely, I will mention the case of States that have been denying the current emergency of climate change and contributing to the already mentioned concept of 'government-induced environmental degradation'[320]. In this regard, it is fair to underline that the representatives of this approach, also called 'denial machine', are not only States, but also those social groups that try to influence public opinion and undermine scientific evidence. For this reason, I will demonstrate how fundamental is the work of NGOs in raising public awareness with regard to the problematics of climate change and environmental-induced migration. Moreover, a section will be devoted to the position of TNCs, which have a long history of environmental exploitation as well as of governmental 'lobbying' to pursue their own business, most of the time at the expenses of the most fragile environments and populations. As a matter of fact, these practices have contributed to the worsening of the global environment and to the change of some governmental decisions, for which their responsibility needs to be investigated. In conclusion, for the sake of this study, I will enhance the work of IOs, which through their continuous efforts have tried to address the issue of environmental degradation and migration at the regional and international level, intervening in the most critical areas of the world.

According to International Law, IOs, individuals, and TNCs have acquired 'international personality'[321]; however, States represent the primary entities subject of international norms, as well as the primary actors of international relations, meaning that they hold the greater rights and

[320] See Chapter 2, paragraph 2.1.

[321] As a matter of fact, they are starting to cover a relevant role in the treaty-making process at the international level, which consequently attribute them responsibility in case of violations; however, the reference to the fact that they hold a legal status in still vague. See: INTERNATIONAL LAW COMMISION (ILC), *Articles on Responsibility of States for Internationally Wrongful Acts, Fifty-third Session,* A/56/10, adopted on 10th August 2001, Arts. 33, 42, and 48.
Moreover, in the case of *Reparation for Injuries Suffered in the Service of the United States, Advisory Opinion,* the ICJ held that being a subject of any legal system involves the possession of legal responsibility; consequently, International Organizations are held responsible for the breach of their obligations undertook with the ratification of a Treaty. See: ICL, *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights Advisory Opinion,* ICJ Reports, April 29th, 1999, p. 62; and ICL, *Reparation for Injuries Suffered in the Service of the United States, Advisory Opinion,* ICL Reports, April 11th, 1949, pp. 174-179.
For what concerns individuals, their international responsibility lies only in the criminal field; however, according to Art. 58 of the ILC's Articles on State Responsibility, under international law, individual international responsibility is recognized in the case of an individual operating on behalf of a State. See: ILC, *Articles on Responsibility of States for Internationally Wrongful Acts, Fifty-third Session,* A/56/10, adopted on 10th August 2001, Art. 58.
See also: EVANS M. D., *International Law*, 5th Edition, Oxford, Oxford University Press, 2018, pp. 416-419.

obligations[322]. While in Chapter 1 I have discussed the elements of the notion of statehood according to the 1933 Montevideo Convention, as well as the analysis of such notion in the work of Crawford applied to the case of the PSIDS and Tuvalu Island[323]; here, I will deepen the discourse on the responsibility of States in the field of environmental-induced migration, beginning from an analysis of the State responsibility for injuries committed to aliens[324]. In conformity with Article 1 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts (DARSIWA), "*Every internationally wrongful act of a State entails the international responsibility of that State*"[325]; meaning that a State will have responsibility only in the case of a violation of an internationally binding obligation. In this sense, the recognition of State responsibility in cases of environmental-induced migration poses several problems. First of all, in view of the fact that there is no legal definition for what is referred to as 'environmental migrant', which implies the absence of a legal binding agreement; secondly, in relation to the fact that the effects of environmental disasters and climate change are the result of the operation of all States, meaning that related environmental damages are hardly imputable to any particular State[326]. However, for what concerns the case of State responsibility for injuries committed to aliens, it is well known that its jurisprudential tradition finds its roots in a famous statement of de Vattel, who affirmed that a State conducting a wrongful act with respect to a citizen of another State is indirectly offending that State because the latter is bound to protect all its nationals within and outside its territory[327]. What can be remarked by this statement is that under classical International Law the legal status of aliens

[322] EVANS M. D., *International Law*, 5th Edition, Oxford, Oxford University Press, 2018, pp. 179-180.

[323] See Chapter 1, Paragraph 3.2.

[324] In Chapter 2, Paragraph 2.2, I have also argued about State's responsibility under the principle of *non-refoulement.*

[325] ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, Fifty-third Session,* A/56/10, adopted on 10th August 2001, Art. 1.

[326] BRUNO G. C., PALOMBINO F. M., AND ROSSI V. (ED. BY), *Migration and the Environment: Some Reflections on Current Legal Issues and Possible Ways Forward,* Roma, CNR Edizioni, 2017, pp. 30-31.
Nevertheless, I will further discuss about the Common but Differentiated Responsibilities under the UNFCCC Regime in Paragraph 3.

[327] CHETAIL V. AND BAULOZ C. (ED. BY), The Transnational Movement of Persons Under General International Law: Mapping the Customary Law Foundations of International Migration Law*,* in *Research Handbook on International Law and Migration,* Cheltenham, Edward Elgar Publishing, 2014, pp. 60-61.
See: DE VATTEL E., *The Law of Nations or the Principle of Natural Law,* Sixth American Edition, Philadelphia, T. & J. W. JHONSON LAW BOOKSELLERS, 1844, "*Whoever ill-treats a citizen indirectly injures the State, which must protect that citizen".*

was the result of inter-state relationships, thus they could have been protected only because they represented the State of their nationality. Nevertheless, following a process of evolution within International Law, the treatment of an alien became the content of the so-called 'international minimum standards', which were identified on a case-by-case basis. The international minimum standards comprehended, among others, the right to life, the right to recognition as a person before the law, and the right of a fair trial in civil and criminal matters. As it can be evinced from the mentioned rights, the international minimum standards of treatment of aliens soon translated into what, nowadays, in International Law is known as Human Rights. Therefore, the responsibility of States for the treatment of aliens has been progressively substituted by International Human Rights Law[328]. What is relevant for this study is that the gradual process of evolution consecrated to the protection of aliens in the case of wrongful acts conducted by a State has led to the resort to Human Rights norms; therefore, it is clear that migrants' rights become universal in light of the fact that they have been anchored within Human Rights norms. Consequently, by analogy, this work is proposing that the rights of migrants forced to move or displace in the aftermath or in the foreseen of environmental changes, should also avail of international protection under Human Rights Law. Furthermore, with the evidence that the actual international legal system is lacking in providing a suitable protection regime, it can be envisaged the creation of a regime moulded by norms of Human Rights Law. This argument will be examined more in-depth in the following chapter.

Analyzing the evolution of the responsibility of States for injuries committed to aliens was important in the recognition of the fundamental role that States play as, direct and indirect, agents in the process of granting or denying protection to those migrants requesting asylum because of the natural degradation's situation in their country of departure. Moreover, States have the duty of establishing governmental policies in accordance with national, regional, and international necessities; and as it is widely known, the theme of climate change and related environmental disasters is still one of the major heated debates within the international community. As a matter of fact, the latter is divided into two parts: those that acknowledge the evidence of climate change and its consequences such as frequents floods, ice melting, and sea-level rise; and those that believe that climate change is not occurring because of the lack of sufficient evidence, as well as the lack

[328] CHETAIL V. AND BAULOZ C. (ED. BY), The Transnational Movement of Persons Under General International Law: Mapping the Customary Law Foundations of International Migration Law*,* in *Research Handbook on International Law and Migration,* Cheltenham, Edward Elgar Publishing, 2014, pp. 62-64.

in proving a real linkage between climate change and natural catastrophes. The latter approach has led to the deterioration of global agreements towards the environment, as well as the denial of the existence of the phenomenon of climate change itself[329]. Particularly, Singer argues that the so-called 'denial machine' is a complex and interlocked network of vested interests, which is built through a coordinated force of important private and public sectors following economic goals. The denial machine aims at creating what has been called 'the climate change uncertainty', through which climate science findings are questioned[330]. Accordingly, the so-called 'polluting elites', namely a network of multinational firms, businessmen, and national governments of the richest countries[331], alongside the media carry a certain weight in making more uncertain the direction to take in order to address climate change. In this context, the most evident representative of denial machine was the United States under the Donald Trump presidency[332], whose most known example of denial action was the announcement, and then the withdrawal from the Paris Agreement in 2017[333].

Furthermore, the 'denial movement' is acting towards a change in values also into education. In fact, there have been several national educational programs and materials that have been supporting the denial argument. Of course, this governmental denial approach will translate into trying to change old beliefs into new ones, so as to design networks of individuals and organizations against climate change and the more general protection of the environment, as they are seen as unnecessary[334]. Finally, another argument advanced by the Trump administration regarded climate change's impact on national security readiness, in the sense that it could jeopardize military installations. Consequently, the United States affirmed that global climate change represented a threat to the international order and the status and power of the Nation-Sates. For this reason, it has underlined the urgency and the need for extraordinary measures required to protect and secure national interest and sovereignty, instead of promoting global cooperation and strategies to protect the environment[335]. Dramatically, this 'securitization' process supported the

[329] SINGER M., *Climate Change and Social Inequality*, London, Routledge, 2019, p. 66.
[330] Ivi, pp. 74-75.
[331] This argument will be further analyzed in the case of Transnational Corporations in Paragraph 4 of this chapter.
[332] SINGER M., *Climate Change and Social Inequality*, op., cit., pp. 70-74.
[333] However, the new Biden administration has stated that the United States will sign again the Paris Agreement.
[334] SINGER M., *Climate Change and Social Inequality*, op., cit., p. 79.
[335] WALLACE D. AND SILANDER D., *Climate Change, Policy and Security*, London, Routledge, 2018, p. 10. For a more in-dept analysis, see: HUNTJENS P. AND NACHBAR K., *Climate Change as a Threat Multiplier for*

idea that demographic changes due to cases of environmental-induced migration will encourage global instability; therefore, some States have started to see the most vulnerable populations to environmental change as a danger, rather than as those that require assistance, undermining the necessity of creating a legal regime that could support their protection[336].

Notwithstanding the influential role of the 'denial machine' and the coverage that has reached; as formerly mentioned, in the aftermath of the Cancún Agreement, there have been more prominent cases of State intervention and cooperation to enhance actions, based on a soft-law approach, towards the adaptation of strategies concerning migrations and displacements consequent to climate change and natural deterioration[337]. In this context, the United States and Canada provided humanitarian post-disaster intervention solutions, by unlocking their national migration's admission policies mainly due to the huge wave of asylum requests soon after the 2009 and 2013 typhoons in the Philippines[338]. Following this example, Matias has proposed that States could consider merging their transnational migration networks with their skilled labour market, in the frame of humanitarian post-disaster intervention. Consequently, she suggests the creation of a 'climate humanitarian visa' encapsulated in the more liberal concepts of cosmopolitanism and human rights. Thereby, States would act not only in a charitable way, but also in consideration of the fact that migrants flee from countries that could share common political values, security agreements, and economic interests with the country of destination[339]. The case of New Zealand will clarify this mechanism.

Getting to the conclusion of this paragraph, in early 2011 the UNHCR gathered a meeting focused on internal and international climate-related movements, which, in the same year, led to

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Human Disaster and Conflict, Policy and Governance Recommendations for Advancing Climate Security, Working Paper 9, The Hauge Institute for Global Justice, May 2015.

[336] HUNTJENS P. AND NACHBAR K., *Climate Change as a Threat Multiplier for Human Disaster and Conflict*, Policy and Governance Recommendations for Advancing Climate Security, Working Paper 9, The Hauge Institute for Global Justice, May 2015 pp. 6 -7.

[337] MOSUELA C. AND MATIAS D. M. S., *International Migration Opportunities as Post-Disaster Humanitarian Interventions,* COMCAD Arbeitspapiere - Working Papers, May 2016, p. 5.

[338] Ivi, pp. 7-8.

Also interesting is the case of the 'Temporary Suspension of Removal' (TSR) adopted by the Canadian government in 2010 to assist Haitians already in the territory that otherwise would have the necessary requirements to remain in Canada. See: OMERZIRI E. AND GORE C., *Temporary Measures: Canadian Refugee Policy and Environmental Migration,* Environmental Induced Displacement and Forced Migration, Vol. 29, No. 2, pp. 43-53, Refuge: Canada's Journal on Refugees, February 26th, 2014.

[339] MATIAS D. M. S., *Climate Humanitarian Visa: International Migration Opportunities as Post-Disaster humanitarian Intervention*, Springer Link, March 25th, 2020, p. 149.

the promulgation of the Nansen Conference[340]. From the latter have been developed the Nansen Principles[341] that, contrary to the Guiding Principles, were addressing also cross-border mobility in the context of environmental disasters[342]. The Nansen Principles are designed to lead further action on the nexus between climate change and mobility. In particular, they emphasized the States' duty with regard to their own populations in ensuring adequate legislations, institutions, and resources in order to build disaster risk reduction strategies[343]. In the words of McAdams, they underscored the complementary role of local, national, regional, and international actors[344]. What is relevant is that the Nansen Conference was a government-led initiative, meaning that it could have provided the bypass of the stall of possible institutional mandates, as well as a relatively neutral spot for the participation of other States' policymakers and researchers.

However, in response to the lack of action from States in the implementation of such Principles, the governments of Norway and Switzerland launched the 2016 Nansen Initiative on Disaster-Induced Cross-Border Displacement, as the follow-up to the former Nansen Initiative[345]. The new initiative represented a great implementation of the auspices of the Cancún Adaptation Framework with regard to the path towards the enhancement of action on adaptation and cooperation. Indeed, it is a state-led, bottom-up approach to the issue of environmental-related movements, but at the same time, it has the ability to maintain a dynamic and inclusive character in order to actively involve also non-state stakeholders. Moreover, even if it was led by Norway and Switzerland, a group of States representatives of the Global North and South decided to participate. Additionally, it was present also a consultative committee composed of delegates of IOs, NGOs, Think-Tanks, as well as academics[346]. The final aim of the initiative was that of strengthening protection through the conceptualization of concrete frameworks and good practices, that had to be integrated according to the existing national normative apparatus. The main result

[340] UN, High Commissioner for Refugees, *Nansen Conference on Climate Change and Displacements,* Oslo, June 5-7th 2011.
[341] Ivi, p. 5.
[342] FERRIS E. AND BERGMANN J., *Soft law, Migration and Climate Change Governance,* Journal of Human Rights and the Environment, Vol. 8 No. 1, March 2017, p. 18.
[343] The Nansen Principles, Principles II, V, VI.
[344] MCADAM J., *Creating New Norms on Climate Change, Natural Disasters and Displacement: International Developments 2010–2013,* Environmental Induced Displacement and Forced Migration, Vol. 29, No. 2, Refugee: Canada's Journal on Refugees, February 26th, 2014, p. 18.
[345] E. FERRIS AND J. BERGMANN, *Soft law,* op., cit., p. 19.
[346] See note 344.

of the Initiative was the 2015 Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change[347], which, among others, addressed the questions of admission and stay for cross-border disaster displacement.

Certainly, the Nansen Initiative was a successful tool, endorsed by more than 100 countries and other actors, which proved to be a useful mechanism providing concrete guidance for States to deal with the issue; nevertheless, it is important to remember that States will still need further guidance in order to adapt the strategies into domestic frameworks. Finally, the Nansen Initiative has not been the only operational instrument used by States concerning disaster risk reduction. As a matter of fact, States tried also to enhance adaptation strategies in the prevention of forced migration. Here, among others, there is the example of the 2015 Sendai Framework[348], which outlines a plan for action up to 2030. Working with the 2015 Paris Agreement and the Sustainable Development Goals[349], the Framework covers not only natural hazards, but also technological ones such as, among others, chemical, nuclear, and biological. In this sense, it proves to be a more prepared action towards prevention, and responses to a wider range of possible accidents[350]. Furthermore, although the framework has a non-binding nature, it has been signed by 187 States on a voluntary basis; consequently, it has achieved an important global scope in the awareness of the necessity of committing to further adaptation actions for cases of environmental-related movements.

1.2 The New Zealand experience

As aforementioned environmental disasters and climate change are global phenomena that characterize all countries. Although with a different degree of participation, there are several

[347] THE NANSEN INITIATIVE, Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, Volume I, December 2015.

[348] UN, Office for Disaster Risk Reduction, *The Sendai Framework for Risk Reduction 2015-2030*, Sendai, March 2015 available at https://www.preventionweb.net/files/43291_sendaiframeworkfordrren.pdf [Accessed 21 April 2021].

See also: UN, Economic Commission for Europe, The Sendai Framework: https://unece.org/sendai-framework [Accessed 21 April 2021].

[349] UN, General Assembly, Resolution 70/01, Seventh Session, *Transforming our World: The 2030 Agenda for Sustainable Development,* New York, September 25th, 2015.

[350] UN, Economic Commission for Europe, The Sendai Framework: https://unece.org/sendai-framework [Accessed 21 April 2021].

examples of developed countries that have tried to advance concrete strategies of adaptation to assist their developing counterparts. Here, I will show the emblematic case of New Zealand and its humanitarian intervention towards the Islands of the Pacific Region.

At the beginning of the 20th century, the United Kingdom conferred to New Zealand the authority and the responsibility to govern the Cook Islands, which progressively followed the transformation of New Zealand into the primary supporter of assistance in the Pacific, acting as a colonial power[351]. Aid policies in the Pacific area were mainly represented by general budget and development support within infrastructures building, education, and health system. However, following a process of strengthening the partnership between New Zealand and the Pacific Islands, in the middle 1980s, Bertram and Watters coined the term MIRAB[352], which highlighted the New Zealander aid policy, especially focused on migration, remittance, foreign aid, and public bureaucracy. For what concerned migration, people from the Pacific Islands could enter the New Zealander territory as if they were holding New Zealand citizenship. As a consequence, it allowed the facilitation of entering the New Zealander labour market and send money back home as remittances, contributing to the growth of national economies, as well as to the increase of standards of living in the Islands[353]. Nevertheless, during the 1990s with the increment of neoliberal economic thought, and the introduction of the Washington Consensus, the Pacific Islands have been profoundly touched by the imposition of tight structural adjustment policies. In these circumstances, the government of New Zealand decided to translate its aid policy into the frame of poverty alleviation, with the subsequent establishment of the New Zealand Agency for International Development (NZAID)[354], which has been working to address poverty issues throughout the notion of 'partnership aid'[355]. In 2009, after the election of the new national administration, the Agency has been directed towards the implementation of strategies of sustainable economic development[356]. As a matter of fact, it can be affirmed that poverty reduction

[351] OVERTON J., *Reshaping Development Aid: Implications for Political and Economic Relationships,* Policy Quarterly, Vol. 5, No. 3, August 2009, pp. 3-4

[352] See: BERTRAM I. G. AND WATTERS R. F., The MIRAB Economy in South Pacific Microstates, in *Pacific Viewpoint*, pp. 497-519, Vol. 26, No. 3, October 1st, 1985.

[353] OVERTON J., *Reshaping Development Aid,* op., cit., p. 4.

[354] NEW ZEALAND, Foreign Affairs and Trade, NZAID: https://www.mfat.govt.nz/en/aid-and-development/ [Accessed on 22nd April 2021].

[355] OVERTON J., *Reshaping Development Aid,* op., cit., pp. 5-6.

[356] Ivi, p. 7.

and economic development share a similar path, which has been concretized by the State of New Zealand with the recent adoption of The Pacific Reset in 2018[357].

The Pacific Reset is an initiative that aims at increasing the efficiency of the financial aid coming from New Zealand to the Pacific Islands. In particular, it prioritizes the action against climate change, the spread of common values, such as good governance and human rights, as well as economic empowerment. According to Peters, Minister of Foreign Affairs and Trade of New Zealand, this operational instrument is founded in the historical view of mutual respect and partnership between New Zealand and the Pacific Regions[358]. Certainly, national leaders have welcomed the opportunity to work with New Zealand in the forecast of strengthening bilateral partnerships, as well as further regional competition, in the name of "understanding, friendship, mutual benefit, collective ambition, and sustainability"[359]. Moreover, much of the agenda is focusing on implementing measures of adaptation strategies, vulnerability reduction, and resilience-building among local populations, which have strongly expressed their willingness of staying in their lands until otherwise possible. As a matter of fact, bearing in mind that Pacific populations see the acquisition of the refugee status as an instrument of 'last resort', the New Zealand government has not completed its plan to issue the so-called 'climate refugee visas'[360]. On the contrary, Pacific Islanders called on New Zealand to reduce its GHG emissions, to support adaptation efforts, and finally to provide legal migration pathways. The latter has become a reality thanks to the adoption of, among others, the Pacific Access Category (PAC)[361] and seasonal migration workers programs. The first is a 'residence class visa' that annually allows a certain number of citizens from Kiribati, Tuvalu, Tonga, and Fiji to enter, settle, and work in New Zealand;

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[357] TRADE STUFF GLOBAL, *What is the Pacific Reset, and how does it impact the NZ trade?:* https://www.tradestaffglobal.com/blog/2020/04/what-is-the-pacific-reset-and-how-does-it-impact-nz-trade [Accessed 22 April 2021].

[358] PETERS W., *Shifting the dial*, Shifting the dial, Eyes Wide Open, Pacific Reset, Speech of the New Zealander Minister of Foreign Affairs, Sidney, March 1st, 2018: https://www.beehive.govt.nz/speech/shifting-dial [Accessed 22 April 2021].

[359] Ibid.

[360] DEMPSTER H. AND OBER K., *New Zealand's "Climate Refugee" Visas: Lesson for the Rest of The World,* Center for Global Development, January 10th, 2020, available at https://www.cgdev.org/blog/new-zealands-climate-refugee-visas-lessons-rest-world [Accessed 22 April 2021].

[361] See: NEW ZEALAND IMMIGRATION, PAC VISA: https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/about-visa/pacific-access-category-resident-visa [Accessed 22 April 2021].

the second has formalized migratory schemes enlarging the possibility of allowing the entrance and the permanence of skilled labour workers coming from the Pacific Region[362].

In conclusion, in light of the above analysis of the New Zealand historical relationship with the Pacific Regions, and the more recent experience with regard to the adoption of humanitarian measures of adaptation against environmental-induced migrations, specifically for instances of climate change-related movements, the New Zealand government has proved to provide a unique model of assistance. The latter could offer a long-term action, as well as an example to be followed by other developed countries.

2. Individuals

In the context of environmental-induced migration, individuals are those actors that are more subjected to environmental slow and sudden hazards, for which they are consequently forced to displace or migrate from their place of habitual residence in search of security. Additionally, among these, there are also individuals that rely on the environment as a mean of survival, like in the case of indigenous people, who experience a higher degree of vulnerability. As a matter of fact, already in 1990, the IPCC affirmed that the greatest effects of environmental degradation will be on human mobility; moreover, it envisaged that in the middle of the 21st century displacements due to climate change will be more consistent, especially in developing countries[363]. As already stated in the previous section of this chapter dedicated to the role of States, International Law also recognizes non-State entities as subjects of the international law system[364]. This recognition is supported by the declaration of the ICJ, which in its *Reparation for Injuries'* Opinion clarified that:

> The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights […]. Throughout its history, the development of international law has been influenced

[362] DEMPSTER H. AND OBER K., *New Zealand's "Climate Refugee" Visas: Lesson for the Rest of The World,* Center for Global Development, January 10th, 2020, available at https://www.cgdev.org/blog/new-zealands-climate-refugee-visas-lessons-rest-world [Accessed 22 April 2021].

[363] See: IPCC, *Climate Change, The IPCC Scientific Assessment: Final Report of Working Group I*, Cambridge, Cambridge University Press, 1990. However, the relation between environmental degradation and human migration has been already discussed in Chapter 1.

[364] See Chapter 3, Paragraph 1.

> by the requirements of international life, and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not States […]. What it does mean is that […] [they are] subject[s] of international law and capable of possessing international rights and duties, and that […] [they have] the capacity to maintain […] [their] rights by bringing international claims[365].

This statement explains that the international legal system has evolved towards a way that allows non-State entities to have international legal personality and therefore, to act independently in the system; this is also the case of individuals[366]. At this point, it is important to specify that the notion of 'individuals' includes natural and non-natural legal persons. The first is human beings, while the second refers to groups formed by human beings in the name of a common interest, such in the case of NGOs or Transnational Corporations[367]. For what concerns individual responsibility, as already noted, this is enforceable under International Criminal Law, as well as International Humanitarian Law. However, although individuals possess rights and responsibilities, it is not automatic that they are able to bring claims in front of International Courts. Indeed, according to the ICJ, some individual rights may be invoked before Courts only through the linkage of nationality between an individual and a State, which is the ultimate subject to grant to the individual its protection[368].

Nevertheless, individuals are permitted to bring claims against a State according to Human Rights Law. In this case, individuals may allege violations of their Human Rights against both the State of nationality or the State where they happen to be at the time of the violation, independently of whether a nationality's tie with the latter subsist or not[369]. In this context, I would like to recall the aforementioned case of *Teitiota v. New Zealand*[370], a Kiribati citizen, who applied for refugee status in New Zealand as a consequence of the effects of climate change, and that was removed from the territory of New Zealand to Kiribati in 2015. Therefore, he claimed that the State of New

[365] *Reparation for Injuries Suffered in the Service of the United States, Advisory Opinion,* ICL Reports, April 11th, 1949, pp. 178-179.
[366] EVANS M. D., *International Law*, 5th Edition, Oxford, Oxford University Press, 2018, p. 261.
[367] Ivi, p. 260.
[368] Ivi, p. 268. See: *Barcelona Traction, Light and Power Company, Limited, Second Phase, Judgment,* ICJ Reports, February 5th, 1970.
[369] EVANS M. D., *International Law*, op., cit. p. 269.
[370] See Chapter 2, Paragraph 2.2.

Zealand violated his right to life under Art. 6 of the Optional Protocol of the International Covenant on Civil and Political Rights[371].

Since the background of the case has already been examined, what is relevant in this section is that although unsuccessful, the case strongly influenced both the regional and international community, which certainly helped to recognize the relationship between climate change and human rights. As a matter of fact, according to the UNHCR on *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters,* International Law must consider instances of environmental-induced migration within a broader range of rights protection, as it has been proved that environmental disasters have several consequences for individuals also in the enjoyment of their fundamental rights[372]. Indeed, the UN Human Rights Committee has already reminded that the right to life enshrined in Article 6 *"must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability, and due process of law"*[373]. Consequently, at the time of the ruling, the Committee recalled that: *"environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life"*[374]. In this regard, with the 2020 view, the Human Rights Committee judged whether Mr Teitiota had sufficiently demonstrated that upon deportation, he faced a real risk of irreparable harm to his right to life under the Covenant[375]. In light of the information presented by Mr Teitiota, the Committee considered that:

> The author sufficiently demonstrated, for the purpose of admissibility, that due to the impact of climate change and associated sea level rise on the habitability of the Republic of Kiribati and on the security situation in the islands, he faced as a result of the State party's decision to remove him

[371] UN, Human Rights Committee, *International Covenant on Civil and Political Rights* (ICCPR), December 16th, 1966, PART III, Art. 6.
[372] UN, High Commissioner for Refugee, *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters*, October 1st, 2020, p. 1.
[373] Un, Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, October 30th, 2018, para. 12.
[374] UN, Human Rights Committee, *Ioane Teitiota v. New Zealand* (advanced unedited version), Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016, January 7th, 2020, para. 9.4, available at https://www.refworld.org/cases,HRC,5e26f7134.html [Accessed 23 April 2021].
[375] Ivi, p. 8.

to the Republic of Kiribati a real risk of impairment to his right to life under article 6 of the Covenant. […][376].

However, on a previous view adopted on Communication No. 2393/2014 "*the Committee has also indicated that the risk must be personal and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists*"[377]. Therefore, on the basis that the risk was not 'personal' and 'imminent' as required by Article 6 of the Optional Protocol to the ICCPR[378], the Committee ultimately concluded rejecting the complaint. While judging on the merits, the Committee had also taken into consideration other factors, such as the sending country active participation to protect its nationals, noting that the government of Kiribati had already started to adopt measures to protect its population through its National Adaptation Program of Action (NAPA)[379], hence it was clear that there was still time to counteract the impacts of climate change[380]. For all these reasons, on the one hand, the Committee accepted that climate change involved a real risk for Kiribati citizens; on the other hand, it rejected the appeal on the violation of the right to life, because the applicant's evidence and circumstances were not sufficient for demonstrating it.

In conclusion, although the outcome of the case did not allow Mr Teitiota and his family to enjoy protection under neither International Refugee Law nor International Human Rights Law, because of the lack of requirements under the two regimes[381], Courts' judgments have envisaged

[376] UN, Human Rights Committee, *Ioane Teitiota v. New Zealand* (advanced unedited version), Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016, January 7th, 2020, p. 9.

[377] UN, Human Rights Committee, *Communication No. 2393/2014*, Views adopted by the Committee at its 114th Session, September 11th, 2015, para. 7.3, available at http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsukPtYsnxNH1DBeueuCbK4jBFbuzbcZjYp31AA7slOXmmrkq5I7ry6f3o5X6EDcJoNuWJhsuyosJFZKKgAsZJow6WCuzKd27XcKbk0nvkz3dXORf5eh11VPqNgFfqPwCNA%3D%3D [Accessed 23 April 2021].

[378] SINCLAIR-BLAKEMORE A., *Teitiota v New Zealand: A Step Forward in the Protection of Climate Refugees under International Human Rights Law,* Oxford Human Rights Hub: A Global Perspective on Human Rights, January 28th, 2020, available at https://ohrh.law.ox.ac.uk/teitiota-v-new-zealand-a-step-forward-in-the-protection-of-climate-refugees-under-international-human-rights-law/ [Accessed 23 April 2021].

[379] REPUBLIC OF KIRIBATI, National Adaptation Program of Action, Tarawa, January 2007, available at https://unfccc.int/resource/docs/napa/kir01.pdf [Accessed 23 April 2021].

[380] UN, Human Rights Committee, *Ioane Teitiota v. New Zealand*, op., cit., p. 12.

[381] See Chapter 2, Paragraph 2.2.

the possibility of environmental degradation to find a pathway into the jurisdiction of Human Rights Courts. Therefore, in acknowledging the findings of this case, it is important to remark the willingness of the current regional and international legal system of protection in setting the basis for an evolution of migrant protection for instances of environmental-induced migration; in particular, for those cases that pose a threat to the enjoyment of fundamental rights. Certainly, to reach concrete results, the international community should avail of different elements stemming from complementary protection, that could enable to extend protection to 'environmental migrants'. Chapter 4 will demonstrate how this approach could be possible.

3. International Organizations (IOs)

At this point of the study, it is appropriate to address the issue of natural degradation and related movements also with regard to the role of IOs. In particular, in recognition of the fact that IOs have been playing a fundamental role in the development of International Law, even in the contribution of implementing a legal system concerning environmental protection and human migration assistance. As a matter of fact, IOs were born out of the need of fostering cooperation among States and to conducing international relations[382]. Normally, they are formed by States and other IOs, they are established by a treaty, unilateral acts of States as well as resolutions from other IOs or State's conferences, and finally, they must have a distinct and separate will from that of their members[383]. IOs are different from TNCs and NGOs, in view of the fact that TNCs are formed by States for a commercial purpose, while the second is composed of private entities that operate across-borders[384].

The first and oldest IOs is the Central Commission for Navigation on the Rhine (CCNR), which was founded in 1815, it is still in operation, and has the aim of encouraging European prosperity and security in the navigation of the Rhine River[385]. The most relevant IO in history as well as the first addressing multiple issues was the League of Nations, established in the aftermath

[382] EVANS M. D., *International Law*, 5th Edition, Oxford, Oxford University Press, 2018, pp. 227-228.
[383] Ivi, pp. 228-229.
See also: ILC, *Draft Articles on the Responsibility of International Organizations,* ILC Report, 2011, Art. 2 (a).
[384] Ivi, p. 229.
[385] Central Commission for the Navigation in the Rhine: https://www.ccr-zkr.org/11000000-en.html [Accessed 25 April 2021].

of WWI with the sign of the Treaty of Versailles during the Paris Peace Conference[386], which ultimately has been substituted by the United Nations (UN)[387]. From the moment of its establishment, the UN, with its agencies, has been representing the leading IO in the world, as its operations touch every area of human life[388]. Indeed, the UN aims at the maintenance of international peace and security, the development of friendly relations among nations, international cooperation in solving international problems of an economic, social, cultural, and humanitarian character, and the promotion of Human Rights[389].

Although primary decisions on immigration policies rely upon States' sovereignty, IOs have started to involve in matters of migration since the 1990s, which consequently allowed a new impact on migration's patterns in terms of multilayered governance[390]. Indeed, it is important to underline that migration policies do not involve only States that promulgate them; on the contrary, they have a strong impact both at the local and global level, in terms of governance[391]. At the beginning of the 1990s, with the collapse of the Soviet Union, the international community felt the incumbency of new problematics; among these, those related to market deregulations, States' sovereignty, and others, have been associated with the foresee of massive migration flows coming from the ex-Communist countries. This preoccupation melded with the idea of an incumbent 'refugee crisis', which ultimately would have necessitated prompt global cooperation and management. This need for cooperation had a twofold purpose: on the one side, the implementation of new strategies to control and limit migration; on the other side, the preservation of Nation-State sovereignty[392]. As a result of the States' understanding of the need to work together to address the issue of emerging migration challenges, IOs have been able to drive their role into migration at both regional and international level. Furthermore, this argument is supported by the fact that they have the ability to change and readjust their mandate[393].

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[386] ALLIED POWERS AND GERMANY, *Treaty of Versailles*, Paris Peace Conference, Versailles, 28th June 1919.
[387] UN: https://www.un.org/en/ [Accessed 25 April 2021].
[388] EVANS M. D., *International Law*, 5th Edition, Oxford, Oxford University Press, 2018, p. 251.
[389] UN, *Charter of the United Nations*, San Francisco, 26th June 1945, Art. 1.
[390] FINE S. AND PÉCOUD A., International Organizations and the Multilevel Governance of Migration, *in Handbook of Migration and Globalization*, Cheltenham, Edward Elgar Publishing, 2018, p. 38.
[391] Ibid.
[392] Ivi, pp. 41-42.
[393] Ivi, p. 43.

Another aspect that is significant in current international politics, is the ever-growing influence that IOs have on States' practice, which is stimulated by the guidance of IOs towards 'appropriate' behaviours in the name of common interests, a shared future, and the projection of universal challenges and threats. Certainly, this practice is encapsulated under the form of 'gentle persuasion' in order for the States to appear actively and willingly participating in the creation of norms that are actually imposed by IOs. As a result of this practice, it appears evident that without direct coercion, IOs have the power to determine the 'right' policies to be implemented by governments and develop strategies to accomplish them[394]. With regard to migration's crisis, Pécoud and Fine argue that IOs serve not only as their solution but also as an essential part of them. In other words, these scholars affirm that IOs work in the name of humanitarian assistance in order to save migrants, which however face nationals' containment regimes that are supported by the same IOs. This means that although operating within a humanitarian and assistance scope, the function of IOs is hard to be completely isolated from conflicting political interests[395].

For the purpose of this study, the role of the UN will be analyzed in the context of environmental degradation, climate change, human rights, and migration, as well as that of the International Organization for Migration (IOM)[396], which is an intergovernmental organization and an UN external agency appointed since 2016 for matters related to a wide range of services and assistance in the context of national, international, voluntary, and involuntary human mobility[397]. Their relevance derives from the fact that they are able to generate and assert expertise in the field of migration, enhancing a more appropriate managerial approach to the issue within a holistic framework, which is able to satisfy different interests and to reach a wider range of

[394] FINE S. AND PÉCOUD A., International Organizations and the Multilevel Governance of Migration, *in Handbook of Migration and Globalization*, Cheltenham, Edward Elgar Publishing, 2018, p. 50. The same behavior will be later analyzed in the case of TNCs.
[395] Ibid.
[396] IOM: https://www.iom.int [Accessed 28 April 2021].
[397] Of course, it is necessary to stress the existence of other IOs, which cover an important role in the field of migration, such as, among others, the International Labour Organization (ILO), which has the mandate to aim at "*the protection of workers when employed countries other than their own*". See: ILO, Constitution, Versailles, 1919, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:KEY,en,ILOC,/Document [Accessed 28 April 2021]. Other IOs in the framework of migration, for example, are: the International Centre for Migration and Policy Development (ICMPD), which is an European organization; the World Bank (WB), which recognizes the linkage between migration and development; the Organization for Economic Cooperation and Development (OECD), which is a regional organization that acknowledge the utility of migration for economic growth; the World Health Organization (WHO), which links migration and health issues.

solutions[398]. The following sections will show the operation of their work, while the wider discourse on global governance and the need for a multilateral approach will be put under scrutiny at the conclusion of this study.

3.1 The International Organization for Migration (IOM): migration, environment, and climate change

In 1951, States decided to establish the Provisional Intergovernmental Committee for the Movement of Migrants from Europe (PICMME) with the aim of assisting all displaced people coming from the Eastern European countries, in the aftermath of WWII. After a sequence of change in name, in 1989, the PICMME finally became the International Organization for Migration (IOM)[399], with the main scope of maintaining a "*humane and orderly migration*", which would benefit both migrants and global society[400]. During the years, IOM developed from being a small reality into becoming the leading intergovernmental agency to which governments and civil society make references to manage the social, economic, and political implications of migration. Moreover, while enhancing the awareness of migrants' issues at the global level, it has also been encouraging the respect of fundamental human rights[401]. In Chapter 1, I have shown how IOM contributed to the debate about the definition and the notion of the term migrant, positioning itself as one of the representatives of the inclusivist approach[402]. I will now examine its evolutive role in the practice of humanitarian assistance for refugees and migrants, with regard to the phenomenon of environmental-induced movements.

IOM's interest in the field of environmental-induced migration dates back to the 1990s; indeed, in 1992 it held the first Conference on the Nexus Between Migration and the Environment in Nyon[403], which followed the publication of various IOM's works on this subject. However, a turning point was reached in 2011 when IOM directly engaged with its Member States on the theme of environmental-induced migration during its International Dialogue on Migration

[398] FINE S. AND PÉCOUD A., International Organizations and the Multilevel Governance of Migration, *in Handbook of Migration and Globalization*, Cheltenham, Edward Elgar Publishing, 2018, pp. 46-48.
[399] IOM, History: https://www.iom.int/iom-history [Accessed 28 April 2021].
[400] Most importantly, in the 21st century, its aim has gained worldwide acceptance.
[401] See note 399.
[402] See Chapter 1, Paragraph 1.
[403] See Chapter 1, Paragraph 2.

Programme. The latter produced a report that was published within its *International Dialogue on Migration Series*[404]. Since then, IOM has always taken part in fundamental global negotiations that aim at the recognition of the connection between the environment and human mobility through the direct submission of technical support to the UNFCCC and to the IASC. Additionally, since 2014 IOM became an observer to the IPPC[405].

Interestingly, acknowledging the absence of an international regime addressing 'environmental migrants' issues, IOM has been advocating for a soft-law and right-based approach under the example of The Guiding Principles on Internal Displacements[406]; as a non-binding instrument based on existing legislation and good practices, and under sources of Human Rights Law, which is the first instrument for universal protection of all individuals. Envisaging such an approach, IOM has also believed that the Nansen Initiative had set a perfect example of its vision[407]. For this reason, it has provided active support to both the 2012-2015 Nansen Initiative and, its follow-up, the Nansen Initiative Agenda[408].

As anticipated in Chapter 1, the 2016 New York Declaration for Refugees and Migrants[409] has remarked the different legal condition between refugees and migrants[410]; and within the scope of its Global Compact for Safe, Orderly and Regular Migration it has underlined the influence of the environment and climate change as drivers of human mobility[411]. Although being a non-binding instrument, it offered a relevant advancement for the recognition of environmental and climate change within the agenda for global governance in terms of migration. During the negotiation process of the Declaration, IOM supported States' decision with evident data, analysis

[404] IOM, Climate Change, Environmental Degradation and Migration, in *International Dialogue on Migration Series*, No. 18, Geneva, 2012.
[405] IOM, IOM Outlook on Migration, Environment and Climate Change, Geneva, 2014, pp. 12-13.
[406]UN, High Commissioner for Refugees, *Guiding Principles on Internal Displacement,* (E/CN.4/1998/53/Add.2) 1998.
[407] IOM, IOM Outlook on Migration, op., cit., pp. 31-33.
[408] IOM, *IOM's Engagement in Migration, Environment and Climate Change*, Geneva, International Organization for Migration (IOM), 2018, p. 5.
[409]UN, New York Declaration for Refugees and Migrants: https://www.unhcr.org/new-york-declaration-for-refugees-and-migrants.html.
[410] See Chapter 1, Paragraph 1.
[411] IOM, *Global Compact for Safe, Orderly and Regular Migration*, July 11th, 2018; See also: IOM, Global Compact for Migration: https://www.iom.int/global-compact-migration, and IOM, Environment and Climate Change in Global Compact for Migration: https://environmentalmigration.iom.int/policy/environment-and-climate-change-gcm [Accessed 28 April 2021].

and examples taken from national and regional good practice experiences[412]. With regard to the differentiation in terms of legal status between migrants and refugees in the context of environmental mobility, Dina Ionesco, who is the head of the Migration, Environment and Climate Change (MECC) Division of the IOM, has recently contributed to the importance of not considering people affected by environmental change as 'refugees'. In her words, this reference would imply a reduction of considerable key factors for instances of human mobility related to climate change and natural degradation. Indeed, the fact that the majority of displacements are internal, and that migration may not be forced as in the case of pre-emptive relocation, the resort to International Refugee Law may diminish protection for individuals at issue; therefore, a human-right based approach is the most suitable solution to address 'climate migration'[413].

Additionally, another point for which IOM has been fundamental concerns efforts towards the establishment of migration management policies. The latter is based on four main pillars: migration and development, migration facilitation, migration regulation, and addressing of forced migration, by promoting the inclusion of environmental-induced migration[414]. Indeed, as it covers the role of leading international agency for migration issues, IOM has been actively advocating the necessity of integrating environmental-induced migration into the general management of migration policies not only at the global level but also at a regional and local one, thanks to its worldwide offices. In this respect, IOM has been arguing that the main migratory policy challenges stem from the fact that current national policies should be more flexible with regard to both IDPs and international migrants[415]. In order to guide this process of migration management, IOM and the Global Migration Group (GMG)[416] have contributed to the creation of a handbook on

[412] IOM, *IOM's Engagement in Migration, Environment and Climate Change*, Geneva, International Organization for Migration (IOM), 2008, p 4.

[413] UN, Sustainable Development Goals, *Let's Talk About Climate Migrants, not Climate Refugees,* June 6th, 2019, available at*: https://www.un.org/sustainabledevelopment/blog/2019/06/lets-talk-about-climate-migrants-not-climate-refugees/* [Accessed on 1st May 2021].

[414] IOM, Climate Change, Environmental Degradation and Migration*,* in *International Dialogue on Migration Series*, No. 18, Geneva, 2012, p. 55. For the inclusion, see: IOM, I*OM Migration Crisis Operational Framework,* One Hundred-First Section, MC/2355, 15th November, 2012, available at https://www.iom.int/sites/default/files/documents/mc2355_-_iom_migration_crisis_operational_framework.pdf [Accessed 1 May 2021].

[415] Ivi, pp. 59-60.

[416] GMG, Acting Together in a World on the Move: https://www.globalmigrationgroup.org [Accessed 28 April 2021].

Mainstreaming Migration into Development Planning[417]*,* which could serve as assistance for policymakers in the creation, development, and implementation of policies related to migration issues[418]. In addition, in light of the fact that unplanned displacements are a recurrent response to natural degradation and hazards, the work of IOM has been encompassing also the dimension of disaster risk reduction (DRR). Consequently, IOM aims at integrating the complex dimension of human mobility through the support of post-disaster recovery, as well as pre-emptive evacuation strategies, which could save the lives of many people. Certainly, IOM efforts go beyond the traditional DDR as its assistance envisage also preventing relocation, labour migration, and remittance for resilience-building[419]. Moreover, the work of IOM also follows the development of capacity-building programmes on migration, environment, and climate change with the bivalent scope of building the capacity of policy-makers and the facilitation of policies exchange among them[420].

In addition, in 2017 IOM also launched its Environmental Sustainability Programme in recognition of the fact that a healthy environment is essential for the well-being of both migrants and the host communities. The programme is based on three key areas: GHGs emissions; water; and waste management; consequently, it is clear that its approach is perfectly in line with that of the United Nations sustainability standards[421]. In this respect, IOM has started to work actively with the UNFCCC after COP14 in 2008[422], with regard to the process of raising awareness of migration and displacement in the framework of climate change[423]. Since 2012 IOM has started to provide technical advice to negotiators and the Secretariat of the UNFCCC[424]; moreover, in 2016

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[417] IOM AND GMG, *Mainstreaming Migration into Development Planning: A Handbook for Policy-makers and Practitioners,* Geneva, International Organization for Migration (IOM), 2010, available at https://publications.iom.int/books/mainstreaming-migration-development-planning-handbook-policy-makers-and-practitioners.

[418] IOM, Climate Change, Environmental Degradation and Migration*,* in *Environment and Climate Change*, Geneva, International Organization for Migration (IOM), 2018, pp. 75-76.

[419] Ivi, pp. 81-82.

[420] IOM, *IOM's Engagement in Migration, Environment and Climate Change*, Geneva, International Organization for Migration (IOM), 2018, pp. 5-6.

[421] Ivi, p. 7.

[422] UN, Framework Convention on Climate Change, *Conference of the Parties (COP 14),* Fourteenth Section, Poznan, December 12nd, 2008.

[423] IOM, Environmental Migration Portal: https://environmentalmigration.iom.int/policy/human-mobility-unfccc [Accessed 28 April 2021].

[424] IOM, *IOM's Engagement in Migration,* op., cit., p. 4.

IOM organized the first technical meeting with the UNFCCC Executive Committee of the Warsaw International Mechanism, and in 2017 IOM joined its Task Force on Displacement[425].

In conclusion, in line with what has been analyzed, it can be affirmed that the IOM approach to address environmental-related migrations and displacements builds upon three main goals, namely environmental-forced migration prevention; protection and assistance contribution; and migration facilitation as an adaptation to environmental and climate change[426]. Furthermore, as it has been emphasized, the work of IOM in the engagement of migration issues, especially in the context of environmental degradation and climate change, translates into a comprehensive operation that encompasses not only efforts towards the assistance of migrants at issue but also the support to States and negotiators in policy and decision-making process[427]. This confirms the aforementioned thesis, according to which IOs have a relevant role in influencing States' practice, and consequently, to a certain extent, have also the 'power' of shaping the direction of the international system.

3.2 The United Nation framework in the context of environmental-induced migration

As mentioned in Chapter 2, at present, the majority of the issues concerning international climate change are discussed among the State Members of the Conference of the Parties (COP)[428]. The latter is the decision-making body of the United Nations Framework Convention on Climate Change (UNFCCC), which represents the primary legal framework to which State Parties can

[425] IOM, Environmental Migration Portal: https://environmentalmigration.iom.int/policy/human-mobility-unfccc and https://environmentalmigration.iom.int/iom-pdd-task-force-displacement-stakeholder-meeting [Accessed 28 April 2021].
See also: UNFCC WIM Task Force on Displacement, *Report of the Task Force on Displacement*, IOM UN MIGRATION, September 2018, available at https://environmentalmigration.iom.int/sites/default/files/2018_TFD_report_16_Sep_FINAL-unedited.pdf [Accessed 28 April 2021].

[426] IOM, Climate Change, Environmental Degradation and Migration, in *International Dialogue on Migration Series*, No. 18, Geneva, 2012, p. 111, and *IOM's Engagement in Migration, Environment and Climate Change*, Geneva, International Organization for Migration (IOM), 2018, p. 2.

[427] However, for a more in-depth study of IOM's work in the field of migration, environment, and climate change, it is advisable to visit its publication portal from which this thesis has taken valuable sources. This is available at https://environmentalmigration.iom.int/iom-publications [Accessed 28 April 2021].

[428] See Chapter 2, Paragraph 5.

make reference for matters related to climate action[429]. Howbeit, already in the 1960s the international community had posed its attention on the issue of natural degradation. The turning point in the concern over the environment has been the 1972 Stockholm Conference on the Human Environment[430], which contributed also to the development of the discipline of Environmental Law[431]. As a result of the Conference, the UNGA established the United Nations Environmental Programme (UNEP)[432], a subsidiary body that would have assisted States with matters related to environmental change. In this section, in view of the non-legally binding nature of the majority of the legal instruments adopted under the UNFCCC, I would like to shortly drive my analysis towards the responsibility of States (if any) in relation to GHG emissions with the aim of demonstrating the correlation between these emissions, climate change, and human mobility. Here, I will examine some legal principles stemming from International Environmental Law[433], such as the 'common but differentiated responsibilities of States'[434], and I will try to understand if these can be applicable to the context of environmental-induced migration. The result of the analysis will demonstrate that this is not the case; nevertheless, I will show why it is important that the UNFCCC recognizes under its regime the notion of 'environmental and climate migrants'.

In the section of this chapter dedicated to States, among others, it has been argued that the effects of environmental disruptions and climate change are hardly imputable to States for several reasons[435]. However, according to Art. 48 (1) of the DARSIWA "*where an international organization and one or more States or other international organizations are responsible for the same internationally wrongful act, the responsibility of each State or organization may be invoked in relation to that act"*[436]. Consequently, it is evident that the injured State can hold accountable each State responsible for the wrongful act. Nevertheless, this provision does not include the case

[429] UN, *Framework Convention on Climate Change* (Rio Convention)*,* Rio de Janeiro, June 14th, 1992. See: UN, *Framework Convention on Climate Change*, Rio de Janeiro, May 9th, 1992, and entered into force on March 21st, 1994.
[430] UN, *Declaration of the United Nations Conference on the Human Environment* (Stockholm Declaration), Twenty-First Plenary meeting, Stockholm, June 16th, 1972.
[431] This argument will be deepened in Chapter 4, in the section dedicated to the notion of complementary protection.
[432] EVANS M. D., *International Law*, 5th Edition, Oxford, Oxford University Press, 2018, p. 677. See: UN Environment Programme: https://www.unep.org [Accessed 2 May 2021].
[433] For a more focused analysis, see: KRAVCHENKO S., CHOWDHURY T. M. R., AND BHUIYAN M. J. H, Principles of International Environmental Law, in *Routledge Handbook of International Environmental Law*, London, Routledge, September 27th, 2012.
[434] See note 429, Arts. 3 (1) and 4 (1).
[435] See Chapter 3, Paragraph 1.
[436] ILC*, Draft Articles on the Responsibility of International Organizations,* ILC Report, 2011, Art. 48 (1).

in which several States commit different wrongful acts that summed up contribute to the same international damage[437]. Therefore, in the case of States that pollute the environment carrying out different actions, the current international regime does not offer a suitable provision to ask for reparation. Moreover, with regard to reparation, assessing the value of injuries attributed to climate change and natural degradation would face some difficulties arising from the evidence that social and natural repercussions, such as human mobility, health, culture, ecosystem, and others, have not an inherent economic value for which compensation can be asked for[438]. On a similar line, the logical consequence of the principle of equal sovereignty of States, to which the current international system is based, in Environmental Law is represented by the 'no-harm principle'. The latter, endorsed by the 1972 Stockholm Declaration[439], the 1992 Rio Declaration[440], and to a certain extent also by the 1992 Rio Convention[441], demands States to avoid engaging in activities that could cause transboundary harm. However, although there is some uncertainty around the real understanding of what this principle should imply; the current international experience for matters of environmental litigation would recognize the no-harm principle as an obligation of good conduct measurable through the efforts undertaken by a State to minimize the risk of

[437] BRUNO G. C., PALOMBINO F. M., AND ROSSI V. (ED. BY), *Migration and the Environment: Some Reflections on Current Legal Issues and Possible Ways Forward,* Roma, CNR Edizioni, 2017, p. 30.

[438] MECHLER R., BOUWER L. M., SCHINKO T., SURMINSKI S., AND LONNEROOTH BAYER J. (ED. BY) *Loss and Damage from Climate Change: Concepts, Methods and Policy Options*, Berlin, Springer Open, 2019, p. 191. However, among scholars, there is an opinion according to which human mobility in terms of relocation not only affects those societies that are forced to move, but also those States in which they relocate. This happens because, the new communities have socio-economic costs that is on the hosting State to bear; consequently, this phenomenon creates a sort of vulnerability for which the sending State might be held responsible. The documented case of the PSIDS in Chapter 1 is an example of this. See: STAIANO F., State Responsibility for Climate Change under the UNFCCC Regime: Challenges and Opportunities for Prevention and Redress, in *Migration and the Environment: Some Reflections on Current Legal Issues and Possible Ways Forward,* BRUNO G. C., PALOMBINO F. M., AND ROSSI V. (ED. BY), Roma, CNR Edizioni, 2017, p. 44.

[439] UN, *Declaration of the United Nations Conference on the Human Environment* (Stockholm Declaration), Twenty-First Plenary meeting, Stockholm, June 16h, 1972, Principle 21.

[440] UN, General Assembly, *Rio Declaration on Environment and Development* (Rio Declaration), Rio de Janeiro, June 14th, 1992, Principle 2.

[441] UN, *United Nations Framework Convention on Climate Change* (Rio Convention), Rio de Janeiro, June 14th, 1992, Preamble. However, the first recognition of the no-harm principle was during the arbitral award of the *Trail Smelter* case in 1941. Here, a Canadian smelter was alleged of producing too much air pollution that was transported by the wind into the US territory, causing environmental damages. See: TRAIL SMELTER ARBITRAL TRIBUNAL, *Trail Smelter case,* Washington D.C., May 6th, 1941, available at https://legal.un.org/riaa/cases/vol_III/1905-1982.pdf [Accessed 3 May 2021].

transboundary harm[442]. Following this reasoning, the content of the no-harm principle is to be understood as 'due diligence'[443], which is "*every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States*"[444]. This was the ICJ statements on its merits in *The Corfu Channel* case, whereby it has tried to translate the missing link between State responsibility and environmental liability in International Law[445]. Nevertheless, it is necessary to underline that States' capacity to reduce or refrain from conducting a wrongful act such as GHG emissions, depends upon States' good efforts; meaning that if a State has duly adopted all the necessary precautions, but the damage still occurs, the latter cannot be held responsible. Consequently, the issue of the State's responsibility applied to cases of environmental matters would still subsist. Furthermore, this problem is reinforced by the fact that each State has a different context in which its national law operates, as well as a different understanding of how customary international law is to be practised. Therefore, the ILC concluded that situations of State's responsibility within environmental matters are as complex as too politically sensitive in order to make international statements about their legal nature[446]. For all these reasons, environmental scholars have started doubting the level of appropriateness of ICJ with regard to claims concerning environmental and climate change issue. As a result of this observation, some scholars of Environmental Law have argued that the allocation of responsibility for a global problem such as climate change and environmental degradation may ultimately find legal responses within the UNFCCC regime.

The most cited legal instruments under the UNFCCC regime are the 1997 Kyoto Protocol[447] and the 2015 Paris Agreement[448]. The 1997 Kyoto Protocol is the only legally binding agreement concerning the reduction of GHG emissions for the States Parties. Indeed, it established the obligation of reducing, in the period between 2008-2012, CO2 emissions of about 5,2 %, compared to the1990's baseline emissions. Within its scope, different countries have different

[442] MECHLER R., BOUWER L. M., SCHINKO T., SURMINSKI S., AND LONNEROOTH BAYER J. (ED. BY) *Loss and Damage from Climate Change: Concepts, Methods and Policy Options*, Berlin, Springer Open, 2019, p. 187.
[443] Ibid.
[444] ICJ, *The Corfu Channel case,* (United Kingdom v. Albania), Merits, Judgement, ICJ Reports, April 9th, 1949, p. 22.
[445] Ibid.
[446] MECHLER R., BOUWER L. M., SCHINKO T., SURMINSKI S., AND LONNEROOTH BAYER J. (ED. BY) *Loss and Damage from Climate Change,* op., cit., pp. 188-189.
[447] UN, *Framework Convention on Climate Change* (Kyoto Protocol)*,* Kyoto, December 11th, 1997.
[448] UN, *Framework Convention on Climate Change* (Paris Agreement)*,* Paris, December 15th, 2015.

targets according to the 'common but differentiated responsibility' principle[449], which gives obligations to minimize current emissions only on countries belonging to Annex 1; namely Developed Countries[450]. This approach has been built on the basis that they are historically responsible for the current levels of greenhouse gases in the atmosphere. As a consequence, the Kyoto Protocol involved in reduction efforts only a limited number of countries[451]. Conversely, the 2015 Paris Agreement set the goal of maintaining the global temperature rise below 2° C by the end of the century. Here, both developed and developing countries have to make efforts for reducing CO2 emissions by designing policies for addressing climate change according to their technological, economic, and financial capacity. Furthermore, the Paris Agreement is centred on the so-called Intended National Determined Contributions (INDCs), which are non-binding documents containing the commitments to reduce CO2 emissions taken by each State Party. Although its non-binding target, the Paris Agreement envisages a new climate governance system since all States Parties are called out to contribute. However, the binding part of the Agreement deals with the monitoring aspect of how the reduction of GHG emissions must be implemented. Finally, in this way, the Paris Agreement also pays attention to the issue of adaptation with the creation of the so-called 'loss and damage' (L&D) system[452]. The latter has the aim of fostering the design, development, and implementation of economic and financial relief for developing

[449] UN, *Framework Convention on Climate Change* (Kyoto Protocol)*,* Kyoto, December 11th, 1997, Art. 10. This principle was first announced at the 1992 Rio Conference and then restated in the preamble of the 2015 Paris Agreement. The fundamental element of this principle is the necessity to take account of the different contributions that each State give to the problem as well as its capacity to remedy it.
See also: UN, *Framework Convention on Climate Change* (Rio Convention)*,* Rio de Janeiro, June 14th, 1992, Art. 3 (1); UNGA, *Rio Declaration on Environment and Development* (Rio Declaration), Rio de Janeiro, June 14th, 1992, Principle 7; and ALAM S., BHUIYAN M. J. H., CHOWDHURY T. M. R., AND TECHERA E. J., *Routledge Handbook of International Environmental Law,* London, Routledge, September 27th, 2012, pp. 53-56.
[450] Ivi, Art. 3.
[451] WALLACE D. AND SILANDER D., *Climate Change, Policy and Security*, London, Routledge, 2018, pp. 44-45.
[452] Initially, the 'loss and damage' approach was set under the Bali Action Plan established in the aftermath of the UNFCCC 2007 (COP 13). See: UN, *Framework Convention on Climate Change* (Bali Action Plan)*,* Bali, December 15h, 2007. According to the Plan, it was envisaged the insertion of a provision for obligations to developed States to pay reparation for injuries caused by excessive GHGs emissions. After the UNFCCC 2013 (COP 19) it was established the Warsaw International Mechanism on Loss and Damages, which became a subsidiary body to the UNFCCC. See: UN, *United Nations Framework Convention on Climate Change,* Warsaw, November 13th, 2013. Finally, reference to L&D was also included in Article 8 of the 2015 Paris Agreement, which, however, does not constitute any compensation of liability for States as the language of the article is undefined and weak. See: UN, *Framework Convention on Climate Change* (Paris Agreement)*,* Paris, December 15th, 2015, Art. 8, and MECHLER R., BOUWER L. M., SCHINKO T., SURMINSKI S., AND LONNEROORTH BAYER J. (ED. BY) *Loss and Damage from Climate Change: Concepts, Methods and Policy Options*, Berlin, Springer Open, 2019, pp. 194-196.

countries in recognition of the fact that global climate change is producing irrecoverable damages such as, among others, loss of freshwater sources and cultural heritage[453]. Of course, this is also applicable to cases of environmental-induced migrations as it entails the loss of habitations.

In order to proceed, it is fundamental to underline that the concept of 'common but differentiated responsibilities' within the UNFCCC regime has drawn the attention of many scholars that have envisaged a potential source of State liability for environmental degradation, and consequently human migration, caused by climate change[454]. Moreover, this principle has also given inspiration for a proposal of an international treaty directly dealing with climate change-induced movements, in the form of an Additional Protocol to the UNFCCC. In this context, the principle would have served as a burden-sharing tool for the determination of the extent to which developed countries would have paid the costs of climate change due to their higher contribution to it[455]. Nevertheless, the word 'responsibility' gives rise to different interpretations. Indeed, during the negotiation process of the Paris Agreement, while the United States, by referring to 'responsibility', intended to strengthen the concept of leadership and technical expertise in the development of environmental protection policies because of their capabilities and wealth; on the contrary, the Islands Developing States secured the idea that developed countries should have had the duty to assist their developing counterparties in meeting the costs of adaptation to climate change because of their vulnerability[456]. Consequently, it is clear that using this principle to assign responsibility to States for the effects experienced by specific individuals, such in the case of environmental-induced migrations, put a strain on the traditional notion of causation[457]. Therefore, in the current international legal system, the principle of common but differentiated responsibilities does not entail any 'traditional' responsibility for States for instances of climate change-related damages.

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[453] WALLACE D. AND SILANDER D., *Climate Change, Policy and Security*, London, Routledge, 2018, pp. 47-49.

[454] BRUNO G. C., PALOMBINO F. M., AND ROSSI V. (ED. BY), *Migration and the Environment: Some Reflections on Current Legal Issues and Possible Ways Forward,* Roma, CNR Edizioni, 2017, p. 34.

[455] Ibid.

[456] MECHLER R., BOUWER L. M., SCHINKO T., SURMINSKI S., AND LONNEROOTH BAYER J. (ED. BY) *Loss and Damage from Climate Change,* op., cit., p. 194.

[457] BRUNO G. C., PALOMBINO F. M., AND ROSSI V. (ED. BY), *Migration and the Environment,* op., cit., p. 35.
See also: MCANANEY S. C., *Sinking Islands? Formulating a Realistic Solution to Climate Change Displacement*, New York University Law Review, Vol. 87, No.4, pp. 1172-1209, October 2012.

As anticipated, in light of the absence of a system that recognizes environmental-induced migrants many scholars have foreseen its recognition under the UNFCCC regime. Fundamental, in this regard, was the decision undertaken by COP16 in Cancún, whose Adaptation Framework's paragraph 14 (f) reads as follow:

> Invites all Parties to enhance action on adaptation under the Cancun Adaptation Framework, 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, the following: […]
> (f) 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[458].

From this statement, it is evident that Parties to the Conference have the willingness to address the issue of climate change-related movements. As a matter of fact, the UNFCCC has the mandate of addressing adaptation issues to climate change. By consequence, this represents an advantage for individuals that need protection in reason of the fact that human migration is understood as an adaptation strategy to climate change. Moreover, the UNFCC can offer an ideal forum for climate negotiations at the national, regional, and international level[459]. In this respect, it would also provide a favourable decision-making position for the most vulnerable countries, in terms of humanitarian and mitigation assistance, security matters, and development policies[460]. At the same time, recognizing 'climate migrants' within the UNFCCC would ensure a more equitable cost burden with respect to the above mentioned common but differentiated responsibility principle. However, this would not be understood in terms of reparation, for reasons explained before, but in terms of reduction of GHGs emissions on the side of the most developed countries[461].

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[458] UN, *Framework Convention on Climate Change*, Cancún, December 10th, 2010, para. 14 (f).
[459] GIBB C. AND FORD J., *Should the United Nations Framework Convention on Climate Change Recognize Climate Migrants?,* Environmental Research Letters, IOP Publishing, October 31st, 2012, p. 2.
[460] Ivi, p. 3, and WORNER K., *Climate Change Induced Displacement: Adaptation Policy in the Context of the UNFCCC Climate Negotiations,* Legal and Protection Policies, UNHCR Research Series, May 2011, p. 13.
[461] Ibid; Ibid; and BRUNO G. C., PALOMBINO F. M., AND ROSSI V. (ED. BY), *Migration and the Environment: Some Reflections on Current Legal Issues and Possible Ways Forward,* Roma, CNR Edizioni, 2017, pp. 34-35.

Finally, it is imaginable that further policies to address environmental and climate-related movements could develop inside the UNFCCC context, by considering both cross-borders migrations and internal displacements, as well as situations in which people cannot return to their places of origin because of environmental reasons; especially, in response to the complexity in achieving the creation of an international agreement that accepts the notion of 'environmental refugees'[462]. This approach would ultimately demonstrate, once again, the argument of this paragraph, thus the fundamental role that IOs play in the process of International Law development.

4. Transnational Corporations (TNCs): rights and resources exploitation

The birth of Transnational Corporations (TNCs) dates back to the 19th century, a period in which a substantial number of firms began 'investigating' across national borders. Normally, they are defined as firms that are owned in their home countries, but that invests in several host economies at the same time, while controlling operations and assets. Their foreign investments, among others, involve portfolio investments, which refer to the acquisition of foreign securities with no control over the management of foreign entities, and foreign direct investments (FDIs), which instead imply the ownership and the control of foreign assets or the establishment of a brand-new foreign operation (greenfield investments)[463]. Although there is not a universally legal accepted definition of TNCs, what is certain is that along with the process of globalization and global development, they have matured certain organizational skills that have allowed them to settle into different contexts, to grow both economically and politically, so as to acquire a certain weight at the international level[464]. According to Singer, the development discourse that started to spread in the aftermath of WWII produced very important cultural implications, that were underlining the differences between advanced and less advanced countries. In this context, the modern and traditional countries became the mainstream tools of this development discourse,

[462] WORNER K., *Climate Change Induced Displacement: Adaptation Policy in the Context of the UNFCCC Climate Negotiations,* Legal and Protection Policies, UNHCR Research Series, May 2011, p. 14.
[463] JONES G., *Multinational and Global Capitalism: From the Nineteenth to the Twenty-first Century,* New York, Oxford University Press, 2004, pp. 4-5.
[464] For a more detailed insight on the development history of Multinationals, see: JONES G., *Multinational and Global Capitalism: From the Nineteenth to the Twenty-first Century,* New York, Oxford University Press, 2004.

whose main goal was the idea of exporting the Western experience and value throughout the world. For this reason, the development discourse was a clear manifestation of a new neocolonial approach driven by global capitalists, and that Singer defines as 'business of development'[465]. The latter represented the Western thought according to which attention needed to be paid to the necessity for modernization of the agriculture sector in the developing countries, through new official development assistance programs and new FDI, fostered by TNCs[466].

For what concerns this study, the development of International Law with regard to the attitude of TNCs has been stationary in front of the debate whether or not these entities are subjects of International Law. Indeed, the international community is divided into two distinct views: a more formalistic one, according to which TNCs have not obligations under International Law; and one that is more policy-oriented, according to which they hold both rights and obligations under International Law. Pursuant to this approach, the branch of law dealing with TNCs behaviours is International Investment Law, which rules above the relations between foreign investors and receiving investors in host States[467]. Investment Law is mainly based on Customary International Law, and since the absence of a universal treaty on foreign investments, it takes as a reference, among others, sources of Human Rights Law, State responsibility, new bilateral investment treaties (BITs), and free trade agreements (FTAs)[468]. Of course, the Law of Foreign Investments has developed over the years in response to historical economic and political changes. Nevertheless, it is commonly understood that the relationship between global governance and TNCs is linked to the fulfilment of three main pillars, namely labour standards, human rights, and the environment. For the purpose of this analysis, I will focus on the last two subjects.

First of all, with the absence of a universal legal definition for TNCs, it is relevant to underline that they are not subjects of International Law, and therefore, they are not directly bound neither to Human Rights Law. Indeed, notwithstanding the UN's efforts, at present, there is not yet a legally binding instrument regulating TCNs behaviours with respect to human rights violations[469]. However, standards have developed at international level. As a matter of fact, in the

[465] SINGER M., *Climate Change and Social Inequality*, London, Routledge, 2019, pp. 48-49.
[466] Ivi, pp. 49-50.
[467] EVANS M. D., *International Law*, 5th Edition, Oxford, Oxford University Press, 2018, pp. 717-718.
[468] Ibid.
[469] Ivi, pp. 722-723, and pp. 729-730.
See also: UN, General Assembly, Resolution A/HRC/RES/26/9 adopted by the Human Rights Council on *Elaboration of an International Legally Binding Instrument on Transnational Corporations and other Business Enterprises with*

early 1970s following the nationalization of TNCs by developing countries, the Organization for Economic Cooperation and Development (OECD)[470] established guidelines for the behaviour of transnational firms committing them to conduce good corporate governance principles. Nevertheless, there has been no consensus on the enforcement of these guidelines; therefore, the OECD Guidelines[471] did not become legally binding instruments[472]. In the same period, there has been an extended work within the UN regime to formulate a 'code of conduct' between TNCs and governments as a mean to guide economic development and to minimize the political ambitions of the largest firms[473]. Consequently, in 1974 the UN under the Economic and Social Council (ECOSOC) established the Commission on Transnational Corporations (CTC)[474], which had the duty to make efforts in accordance with the New International Economic Order (NIEO), thus in the pursue of global economic equality and prosperity, which has been introduced by developing countries[475]. However, the negotiation for this code of conduct never reached a formal agreement among the negotiators; consequently, since 1992 its negotiations have been suspended[476]. Interestingly, in the absence of an international legal code for investments, TNCs started to commit themselves to global codes, norms, and values; for example, the multinational Shell became the first to embrace the United Nations Universal Declaration of Human Rights[477]. Finally, following the example of Shell, also other TNCs have begun endorsing on a voluntary basis into their statutes the so-called standards of conduct. These are a set of rules of conduct formed by the above mentioned EOCD Guidelines[478], the UN Global Compact principles[479], and the UN Guiding

Respect to Human Rights, Twenty-Sixth Session, New York, July 14th, 2014, available at https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/9 [Accessed 3 June 2021].

[470] It is an Intergovernmental Economic Organization funded in 1961 and formed by 37 States Parties, with the aim to stimulate economic progress and global trade. For more information, see: OECD: https://www.oecd.org/about/ [Accessed 7 May 2021].

[471] OECD, *OECD Guidelines for Multinationals Enterprises*, Edition 2011 available at http://mneguidelines.oecd.org/guidelines/ [Accessed 7 May 2021].

[472] JONES G., *Multinational and Global Capitalism: From the Nineteenth to the Twenty-first Century,* New York, Oxford University Press, 2004, p. 222.

[473] Ibid.

[474] UN, Economic and Social Council, Resolution 1908 (LVII), Fifty-seventh Session, E/5570, Geneva and New York, August 2nd, 1974.

[475] EVANS M. D., *International Law,* 5th Edition, Oxford, Oxford University Press, 2018, pp. 725-726.

[476] See note 472.

[477] Ivi, p. 223.

[478] EVANS M. D., *International Law*, op., cit., pp. 722-723, and pp. 729-730.

[479] The UN Global Compact is a set of principles extrapolated from different sources, namely the 1948 UN Universal Declaration on Human Rights, the 1998 ILO Declaration on Fundamental Principles and Rights at Work, the 1992

Principles on Business and Global Rights[480]. Notwithstanding, the evolution of International Law and the practice of some TNCs, what can be evinced by the proposed examination is that commitments of TNCs to comply with standards of good conduct are voluntarily and at the present there is not a universal recognized mechanism.

Before concluding this paragraph, I would like to stress another fundamental historical aspect of the development of TNCs, which contributed to the exploitation of natural resources and the deterioration of the global environment. At the end of the 1980s, developed countries advanced a structural adjustment program named Washington Consensus[481] with the purpose of advancing modernization and globalization. In the words of Singer, this program operated under the political agenda of capitalistic forces that 'offered' the program to developing countries under conditionality to which they should have aligned. In this respect, developing countries had to adopt privatization, liberalization, and deregulation policies in order to have concessions in terms of debt relief or debt rescheduling that would have enabled them to reach modernization and development. As a result, it was clear that this paved the way for having systematically reduced national governments' social expenditures for, among others, healthcare, education, and environmental protection[482]. The so-called 'polluting elites' represented the network of TNCs, businessmen, national governments of the richest countries that on the one side, were exploiting nature and

Rio Declaration on Development, and the 2003 UN Convention Against Corruption. See: UN, Global Compact: https://www.unglobalcompact.org/what-is-gc/mission/principles [Accessed 7 May 2021].

[480] These have been proposed by the Special Rapporteur on Business and Human Rights John Ruggie, with the aim of preventing, addressing, and remedying to human rights abuses committed during business operations. They are based on three main pillars: States' responsibility to protect from human rights abuses, Corporations' social responsibility to respect human rights and access to remedy both from States' jurisdiction and among international companies' mechanisms. The Human Rights Council endorsed these Guiding Principles in its resolution 17/4 on June 16th, 2011. See: UN, General Assembly, Resolution A/HRC/RES/17/4 adopted by the Human Rights Council on Human Rights Transnational Corporations and other Business Enterprises, Seventeenth Section, June 16th, 2011, available at https://media.business-humanrights.org/media/documents/5a5ec2dffb1a6e386f573315220b462dc092e0d8.pdf [Accessed 7 May 2021].

[481] Importantly, the origins of the concept and of the name are credited to the international economist John Williamson, who in 1989 introduced the Washington Consensus as a set of ten policy recommendations. These were: fiscal policy discipline; redirection of public spending from subsidies; tax reform; market-determinate interest rates; competitive exchange rates; trade liberalization; liberalization of inward FDIs; privatization of State enterprises; deregulation; and legal security for property rights. For a detailed study, see: WILLIAMSON J., *The Washington Consensus as Policy Prescription for Development*, a lecture in the series "Practitioners of Development" delivered at the World Bank, Institute for International Economic Rights, January 13th, 2004, available at: https://www.piie.com/publications/papers/williamson0204.pdf [Accessed 7 May 2021].

[482] SINGER M., *Climate Change and Social Inequality*, London, Routledge, 2019, pp. 51-53.

human labour generated, and on the other side, were increasing ecological destruction and unequal distribution of wealth and ecological resources. Consequently, it can be affirmed that the structural adjustment programs that have been imposed on these countries led to a reduction of States' intervention in national affairs[483]. The practice of TNCs to try to influence the formation-process of national and international policies in both home and host States, otherwise called 'lobbying', originates during these years, an aspect that nowadays became the feature of each capitalistic system[484].

However, the operation of TNCs goes beyond. Indeed, in Singer's opinion, the fact that some TNCs have adopted the so-called corporate social responsibility (CSR) [485] is only a smokescreen to continue pursuing their business profits. In this discourse, he argues that on the one side, TNCs represents the champions of economic development in terms of jobs creation and environmental management; on the other side, they frequently use their CSR just as a tool to increase their good public image. Therefore, Singer affirms that frequently international companies' commitments to manage environmental and economic effects follow public expectations, meaning that if the community does not approve the way in which they do business, they may lose customers or see their reputation suffers; consequently, they change behaviour[486]. Certainly, this can produce some benefits for the society, but in the short-run; conversely, in the long-run TNCs will feel legitimate in pursuing economic processes that may increase GHG emissions. To conclude, their CSR functions as a screen hiding the reality behind what they are showing to the global society. Undoubtedly, this represents a huge problem in view of the repercussions felt on a global scale, and of course, on a higher degree for the poorest countries. Indeed, the latter are those that contribute the least but are also those that suffer the most, although being the least prepared to respond to this threat. In this context, social justice may play a fundamental role; consequently, in the next paragraph, I will show how in view of some national States' weakness to take the lead, Non-Governmental Organizations (NGOs) should actively intervene in balancing the situation.

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[483] SINGER M., *Climate Change and Social Inequality*, London, Routledge, 2019, pp. 54-57.

[484] JONES G., *Multinational and Global Capitalism: From the Nineteenth to the Twenty-first Century,* New York, Oxford University Press, 2004, p. 224.

[485] EVANS M. D., *International Law*, 5th Edition, Oxford, Oxford University Press, 2018, pp. 722-723, and pp. 729-730.

[486] SINGER M., *Climate Change and Social Inequality*, op., cit., pp. 54-57.

5. Non-Governmental Organizations (NGOs) and their role toward public opinion

In the last section of this chapter, I would like to focus on the role of environmental NGOs as providers of global awareness towards civil society in relation to the issue of environmental degradation, and by consequence of environmental displacements and migrations. In particular, by investigating their ever-growing participation in environmental law-making and enforcement processes, I will demonstrate how they appear a valuable resource in the battlefield of environmental protection as well as in the spread of the understanding of people's movements stemming from natural deterioration. Moreover, I will also bring the *Urgenda* case with regard to a climate change litigation advanced by the Dutch NGO Urgenda against the Dutch government, which was alleged of producing too many GHG emissions. This case, first of its genre, although within a domestic context has proved significant in making climate change a political and social issue and has inspired different climate change litigations all over the world. Thanks to it, climate change has finally been perceived by global society as a global issue.

Briefly, non-State actors such as NGOs have started to take part in International Law activities already in the past; however, only recently they have increased their participation in the international arena for both shaping treaty negotiations, and in the subsequent process of compliance with treaties[487]. Additionally, as anticipated before, the ICJ with its opinion on *Reparation for Injuries* recognized NGOs as subjects having legal personality[488], and their legal status has also been developed at the national and regional level as well as within IOs and other treaty bodies. Nevertheless, as a set of international rules referring to NGOs as a category is still missing, currently they are facing problems of international legitimacy; consequently, they do not possess yet an international legal status[489].

[487] EVANS M. D., *International Law,* 5th Edition, Oxford, Oxford University Press, 2018, pp. 275-276.
[488] See Chapter 3, Paragraph 2.
[489] EVANS M. D., *International Law,* op., cit., p. 277. For a more in-depth analysis of NGOs' history, see: LEWIS D., Nongovernmental Organizations, Definition, and History, in *International Encyclopedia of Civil Society*, pp. 1056-1062, New York, Springer, January 2010.
See also: COUNCIL OF EUROPE, *European Convention on the Recognition of the Legal Personality of International NGOs,* April 24th, 1986, and entered into force in 1991.

That being said, what is important for this study is that the role of NGOs has experienced a positive evolution, especially in relation to environmental matters. As a matter of fact, NGOs, from a passive participation as mere observatories – such as in the case of the 1992 Rio Conference -have registered an ever-growing involvement in environmental transnational litigations. Most importantly, NGOs also have a persistent engagement in 'pushing' States towards the enforcement of environmental norms through Human Rights Law[490]. What is clear is that this development paved the way for a new understanding of international society, composed not only by States but also by civil society, governmental NGOs, and indigenous groups, that engage themselves for the global community's interest[491].

Nevertheless, while the majority of the governments recognizes the NGOs' active participation as vital for the benefits of the civil society, others fear that NGOs may instead be the cause of civil society disadvantages. As a matter of fact, sometimes authorities perceive NGOs' involvement as an excuse to favour special interest groups, so as to distort policies with the aim of following their own agenda[492]. However, this appears quite extreme and unjustified if governments consider the enormous advantages that NGOs may instead bring. Indeed, the assistance of NGOs is welcomed not only in view of their increasing financial and technical advancement but also in light of their uniqueness in serving as an alternative to inadequate or weak governments and institutions. In this context, NGOs answer to the need for a more inclusive dialogue working as facilitators, as well as guarantors for the collaboration with national governments and institutions[493]. This approach, in particular, is extremely important for instances of climate change and environmental degradation, as it is considered that these phenomena are locally experienced and therefore, require the effective participation of local civil society, and a less state-centric configuration[494]. The first example of the engagement of a local civil society for a matter of

[490] See: GIORGIETTI C., *The Role of Nongovernmental Organizations in the Climate Change Negotiations*, Colorado Journal of International Environmental Law & Policy, No. 115, 1998.
[491] EVANS M. D., *International Law,* 5th Edition, Oxford, Oxford University Press, 2018, pp. 680-682.
[492] UN, *Promoting Sustainable Development Through More Effective Civil Society Participation in Environmental Governance: A Selection of Country Case Studies from the EU-NGOs Project.* United Nations Development Programme (UNDP), New York, 2016, p. 10.
[493] Ibid.
[494] See: LOBO C., *Mainstreaming Climate Change Adaptation: The Need and Role of Civil Society Organizations*, World Resource Institute: https://www.wri.org/our-work/project/world-resources-report/mainstreaming-climate-change-adaptation-need-and-role-civil [Accessed 8 May 2021], and TURHAN E., *Of (not) Being Neighbors: Cities, Citizens and Climate Change in an Age of Migrations*, Mobilities, April 2019.

environmental degradation in a litigation has been set by the NGO Urgenda, which brought a complaint against the Dutch government, alleged of holding obligations to reduce its GHG emissions urgently and significantly[495].

In 2015 Urgenda requested a court order asking the State of the Netherlands to reduce its GHG emissions so as to reach by the end of 2020 a total of 40%, or at least 25%, reduction compared to 1990. The domestic District Court allowed the claim at issue and ordered the State to reduce its GHG emissions by at least 25% by the end of 2020 compared to 1990[496]. In 2018 the Court of Appeal confirmed the District Court's judgment[497]; a decision that, however, has been appealed in cassation from the State of the Netherlands. Finally, the Supreme Court rejected the State's appeal in cassation; consequently, the previous order of the District Court issued to the State, and confirmed by the Court of Appeal, stood as final[498]. In particular, according to the facts of the case, in view of the need, since the Industrial Revolution, to use energy generated by the

[495] Actually, it is worthy to mention that there have been other regional cases in which the civil society has directly involved itself for the protection of their fundamental rights against violations of States resulting from global warming. For example, this was the case of the *Inuit Petition* brought in front of the American Commission of Human Rights (ACHR) in 2005, against the United States of America. The Inuit are a linguistic and cultural indigenous group that lives in the Artic Regions of United States of America and Canada, which for several years has been experiencing the effect of global warming in its lands. One of the most significant impacts, among others, is the erosion of sea ice and the consequent rise of sea level. For this reason, global warming is preventing them to hunt and harvest as well as to accomplish other usual activities, which are the result of many years of survival in close contact with the environment. By availing themselves of the scientific data of the 2001 Third Assessment Report of the IPCC, and by demonstrating that at that time the United States of America was the largest emitter of GHG gases, the Inuit appealed to international and regional obligations, to which the State is bound by ratification, stemming from the membership to the OAS, the acceptance of the 1948 American Declaration of the Rights and Duty of the Man, and from being party to both the ICCPR and ICESCR. Moreover, in the petition, the Inuit also listed possible remedies to be undertaken by the alleged State. Finally, in 2016, the ACHR denied the petition, in line with its Article 26 on Rules of Procedure, because of the absence of satisfying information able to determine whether the alleged fact would constitute a violation of the right protected by the 1948 American Declaration. Nevertheless, this drew huge attention on the links between climate change and human rights. See: CROWLEY P., *Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulted from Global Warming Caused by Acts and Omission of the United States,* December 7th, 2005 available at http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2005/20051208_na_petition.pdf, and IACHR AND OAS, *Decision on Petition No. P-1413-05,* November 16th, 2006, available at http://climatecasechart.com/non-us-case/petition-to-the-inter-american-commission-on-human-rights-seeking-relief-from-violations-resulting-from-global-warming-caused-by-acts-and-omissions-of-the-united-states/ [Accessed 10 May 2021].

[496] *The State of the Netherlands v. Stichting Urgenda*, ECLI:NL:GHDHA:2018:2610, the Hague District Court, June 24th, 2015, available at https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2015:7196 [Accessed on 10th May 2021].

[497] Ibid.

[498] Ivi, pp. 2-3.

combustion of fossil fuels that produce CO2, which goes directly into the atmosphere contributing to the warming of the planet, it is confirmed that climate warming is human-caused[499]. Moreover, the ratification of the 1992 Rio Convention had the purpose, among others, of demising the production of GHG emissions in order not to negatively affect the climate system; this effort must be carried out by countries in Annex 1, including the Netherlands[500]. Finally, the same concept has been confirmed by the 2015 Paris Agreement, which planned to set out a global framework to avoid catastrophic climate change by limiting the emissions of GHG[501]. For all these reasons, Urgenda accused the States of the Netherlands of unlawfully producing too many GHG emissions in comparison to the worldwide share, and therefore, violating the due care, as part of the State's duty, to those individuals that Urgenda represents under Article 2 and 8 of the European Court of Human Rights (ECHR)[502].

The State replied to the accusations by asserting that there is not a national or international law concerning a duty that requires States to take measures towards the reduction of GHG emissions, as well as that the ECHR Articles 2 and 8 do not imply a legal obligation for a State to take mitigation measures to counter climate change[503]. The District Court accepted the claim made by Urgenda and ordered the Dutch government to limit the annual volume of GHG emission under the Dutch Civil Code. Indeed, the Court did not accept the legal reasoning based on Articles 2 and 8 under the ECHR because they can be advanced only by those that are directly affected by the violation, thus the victims, and not by their representative as Urgenda for the case at issue[504]. Successively, in 2018 the State of the Netherlands and Urgenda lodged an appeal in front of the Hague Court of Appeal against the District Court's judgement, which was upheld by the Court of

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[499] See: IPCC, *AR5 Climate Change 2014*, Fifth Assessment Report, 2014, available at https://www.ipcc.ch/assessment-report/ar5/ [Accessed on 8th May 2021].

[500] UN, *United Nations Framework Convention on Climate Change* (Rio Convention), Rio de Janeiro, June 14th, 1992.

[501] UN, *United Nations Framework Convention on Climate Change* (Paris Agreement), Paris, December 15th, 2015. *The State of the Netherlands v. Stichting Urgenda,* Judgment 19/00135, Supreme Court of the Netherlands, December 20th, 2019, para. 2.1.

[502] *The State of the Netherlands v. Stichting Urgenda,* Judgment 19/00135, Supreme Court of the Netherlands, December 20th, 2019, para. 2.2.2. The rights at issue are the Right to Life and the Right to Respect for Private and Family Life. See: COUNCIL OF EUROPE, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, as amended by Protocols Nos. 11 and 14, supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, November 4th, 1950, Arts. 2 and 8, available at https://www.echr.coe.int/documents/convention_eng.pdf [Accessed 10 May 2021].

[503] Ivi, para. 2.2.3.

[504] Ivi, para. 2.3.1.

Appeal. However, in doing so, the Court of Appeal gave a different legal reasoning than that brought by Urgenda, thus it affirmed that the State had positive obligations in order to protect the rights of its nationals under Article 2 and 8 of the ECHR. Additionally, the Court of Appeal asserted that Urgenda belongs to the class of actions' providers by interest groups under the Dutch Civil Code, meaning that it actually had the ability to bring the case on behalf of the individuals that represents[505].

Undoubtedly, what is relevant in this case is that for the first time in history the ECHR Articles 2 and 8 have been invoked to take actions against climate change, with the intention to extend their applicability to the collectivity, and not only to individuals[506]. The Dutch State took the decision to appeal the case again in front of the Supreme Court of the Netherlands in 2019, which confirmed the Court of Appeal interpretation of Articles 2 and 8 under the ECHR. By consequence, the Court stated that the Netherlands did not have only national obligations to reduce GHG emissions derived from the 2015 Paris Agreement, but also international obligations under Human Rights Law. Furthermore, the Court explained that the risk coming from acts of private individuals for instances of environmental matters is to be intended as real, genuine, and imminent as they are directly threatening persons involved in the long-term. Finally, for the Court, these two elements have been sufficient for the application of the above-mentioned ECHR articles[507]. The Supreme Court rejected the appeal, and the State of the Netherlands had to reduce its annual emission of GHG. Urgenda, once again, won the case.

What is necessary to extrapolate from the above analysis is that the Court of Appeal's judgment represented a very evolutive and innovative application of Human Rights norms in the context of environmental issues, as well as the decision of the Supreme Court to uphold the previous judgement. Although this was a case of a national climate change litigation, it strongly influenced the international community, which has been, since then, intended as both States, IOs, and the civil society. As a matter of fact, the role played by Urgenda was fundamental in paving the way for further juridical actions from the part of the civil society, both to increment the interest of the public opinion with regard to environmental issues and, to a certain extent, to serve as public guidance. What is desirable is that the jurisprudence will be following an evolutive process able

[505] *The State of the Netherlands v. Stichting Urgenda,* Judgment 19/00135, Supreme Court of the Netherlands, December 20th, 2019, para. 2.3.2.
[506] Ivi, para. 5.3.1.
[507] Ivi, para. 5.2.2.

to grant the notion of ‘the right to have a healthy environment’, so as to finally create the international legal source to which individuals and communities affected by climate change and environmental deteriorations may address to for protection. The last chapter of this study will show how this could be possible.

CHAPTER 4: COMPLEMENTARY PROTECTION

1. The notion of Complementary Protection

Throughout this study, the concept of 'complementary protection' has been repeatedly mentioned. In Chapter 1, while discussing the evolution of the notion of environmental-induced migration, it has been highlighted, among others, the difficulty in assessing the universal definition for people induced to migrate due to environmental degradation with the aim of determining their legal status. Therefore, the necessity of availing of a protection that could complement the current legal protection system has been introduced[508]. The latter, examined in Chapter 2, is mainly based on the 1951 Refugee Convention[509], which, however, presents many limitations to grant protection to 'environmental migrant'. Moreover, as a result of investigations on regional and national protection systems, based on both hard and soft law, as well as on the efforts of many scholars in building a suitable protection framework, it has been proved the essentiality of resorting to the use of 'complementary protection'. In particular, in the words of the former Special Rapporteur Knox on human rights and the environment, the recognition of the right to a healthy environment as a human rights norm would enable an expansion in the realm of protection available for migrants in the context of environmental deterioration[510]. Finally, in Chapter 3, devoted to the role of the actors in the international legal system concerning environmental-induced migration, the *Teitiota v. New Zealand* judgment[511] has been recalled. Courts called upon to judge and the Human Rights Committee merits on the case have both envisaged the possibility of creating a pathway for environmental degradation and climate change as sources of legal protection; especially, for instances in which a threat to the enjoyment of fundamental rights is posed[512]. Additionally, it has

[508] See Chapter 1, Paragraph 2.2.
[509] UN, High Commissioner for Refugees, *Convention Relating to the Status of Refugees,* Geneva, 1951.
[510] See Chapter 2, Paragraph 2.
[511] *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment,* CIV-2013-404-3528 [2013] NZHC 3125, New Zealand: High Court, November 26th, 2013; *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment*, CA50/2014 [2014] NZCA 173, New Zealand: Court of Appeal, May 8th, 2014; *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment*, [2015] NZSC 107, New Zealand: Supreme Court, July 20th, 2015; and UN, Human Rights Committee, *Ioane Teitiota v. New Zealand* (advanced unedited version), Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016, January 7th, 2020.
[512] See Chapter 3, Paragraph 2.

been shown how the successful outcome of the *Urgenda* case[513] has paved the way for further climate change litigations in an evolutive and innovative framework, characterized by the application of human rights norms in the context of environmental matters[514]. At the same time, the above-mentioned case has proved to be a reliable guidance in envisaging an *ad hoc* protection framework built upon the combination of different actors under a multilateral engagement, that would complement the current international protection system for environmental-induced migrants. Conclusively, at this point, two questions may arise: what the notion of complementary protection is, and how it could serve as a legal source to grant protection in the case of environmental-induced migration. To respond to these questions, a deep analysis of the concept of 'greening' the Human Rights will be conducted. Specifically, the growing interest towards the international recognition of the right to a healthy environment will be discussed, which could set the legal basis for the protection of 'environmental migrants'. The results of this analysis will be accompanied by the necessity of increasing the global awareness towards environmental issues and their multiple repercussions, with the aim of filling the current international protection gap, supported by strong global cooperation.

Before engaging in the investigation of the applicability of 'complementary protection' for the issue at study, it is relevant to state that the term 'complementary protection' has not a universal legal definition. As a matter of fact, its concept and usage have emerged during the last years, as the result of the practice of industrialized countries in being exempted from the removal of asylum seekers that did not fall under the protection granted by the 1951 Refugee Convention[515]. In particular, complementary protection describes a human-rights based protection complementary to that granted by the 1951 Convention, and that goes beyond instances not directly connected to the 'traditional' understanding of the term refugee in International Law[516]. As a consequence of the lack of a universally accepted definition, complementary protection is often confused with the

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[513] *The State of the Netherlands v. Stichting Urgenda*, ECLI:NL:GHDHA:2018:2610, the Hague District Court, June 24th, 2015; *The State of the Netherlands v. Stichting Urgenda,* ECLI:NL:GHDHA:2018:2591, the Hague Court of Appeal, October 9th, 2018; and *The State of the Netherlands v. Stichting Urgenda,* Judgment 19/00135, Supreme Court of the Netherlands, December 20th, 2019.

[514] See Chapter 3, Paragraph 5.

[515] MANDAL R., *Protection Mechanisms Outside of the 1951 Convention ("Complementary Protection"),* Legal and Protection Policies Research Paper, PPLA/2005/02, Department of International Protection, United Nations High Commissioner for Refugees, Geneva, June 2015, p. 2.

[516] MCADAM J., *Climate Change*, *Forced Migration and International Law*, Oxford, Oxford University Press, 2012, p. 53.

concept of 'temporary protection'. However, the latter, normally, consists of a short-term relief from increasing cases of asylum claims; while complementary protection is not an emergency or a provisional tool, as its scope is that of being an alternative to the 1951 Convention and its 1967 Protocol[517]. In light of the protection gap of the 1951 Refugee Convention and its Additional Protocol, which has been already extensively treated, the UNHCR mandate has often been subject of scrutiny in relation to its wider group of people considered eligible for protection, namely refugees, returnees, and stateless persons[518]. In this respect, as it can be evinced, the UNHCR mandate does not deal with IDPs; moreover, it is evident that returnees are not in search of protection from return to their country of origins, as well as the fact that for stateless persons a specifical international regime is already in force[519]. Finally, as stated in Chapter 1, Paragraph 2.2 the use of the label 'refugee' in the context of environmental migration leads to inadequate responses, in view of the vast range of determinants that shape the modalities and the causes of environmental and climate change movements. Consequently, also the resort to the UNCHR protection for the matter at issue appears unsuitable.

Notwithstanding this conclusion, as aforementioned, complementary protection sets a human-rights based approach, for the protection of those individuals that move for general environmental deterioration, which builds upon different existing international and regional standards of complementarity[520]. In this context, the 'right to life' is the primary example of a source of complementary protection because of its universal recognition under both international and regional regimes[521], namely under Art. 3 of the 1948 Universal Declaration on Human

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[517] MANDAL R., *Protection Mechanisms Outside of the 1951 Convention ("Complementary Protection"),* Legal and Protection Policies Research Paper, PPLA/2005/02, Department of International Protection, United Nations High Commissioner for Refugees, Geneva, June 2015, p. 3.
The applicability of temporary protection will be the subject of Paragraph 3 of this chapter.

[518] See: UN, High Commissioner for Refugees, *The Mandate of the High Commissioner for Refugees and his Office*, Division of International Protection, October, 2013.

[519] MANDAL R., *Protection Mechanisms Outside of the 1951 Convention,* op., cit., p. 3, note 6.
See: UN, High Commissioner for Refugees, *Convention Relating to the Status of Stateless Persons,* New York, 1954, and *Convention on the Reduction of Stateless,* New York, August 30th, 1961.

[520] MCADAM J., *Climate Change*, *Forced Migration and International Law*, Oxford, Oxford University Press, 2012, p. 55.

[521] It is worth to precise that three main regional regimes can be identified for the practice and protection of human rights: Africa, America, and Europe. For what concerns Asia, at the moment, there is no organisations, court, or conventions to promote or protect human rights; however, the Association of Southeast Asian Nations (ASEAN) adopted the 2012 ASEAN Human Rights Declaration. See: ASEAN, *the ASEAN Human Rights Declaration,* Phnom Penh, 2012, available at https://asean.org/asean-human-rights-declaration/ [Accessed on 17th May 2021]. A similar

Rights[522], Art. 6 of the 1966 International Covenant on Civil and Political Rights (ICCPR)[523], Art. 6 of the 1989 Convention on the Rights of the Child[524], Art. 2 of the 1950 European Convention on Human Rights (ECHR)[525], Art. 4 of the 1969 American Convention on Human Rights[526], Art. 4 of the 1981 African Charter on Human and People's Rights[527], and Art. 5 of the 2004 Arab Charter on Human Rights[528]. Importantly, the right to life includes obligations for the State to undertake positive measures to protect the life of its nationals. Indeed, this was the case of *Teitiota v. New Zealand* judgement, in which it was pointed out that the State of Kiribati was already actively taking action to reduce the impacts of climate change through its National Adaptation Program of Action (NAPA)[529]. Nevertheless, what was relevant was the impact of the international acknowledgement and awareness of the direct connection between the environment and human rights, which for the case at issues meant that natural deterioration had repercussions on the enjoyment of the individual's right to live. At this point, with this evidence and with the obligations of States to adopt positive measures to protect nationals' life, a successful step forward in the protection realm of environmental-induced migrants would be that of the universal recognition of the right to a healthy environment as a human rights norm.

Crucially, in complementary protection's claims due to natural disasters, the 'harm' to which the applicant is subject plays a fundamental role to determine whether a substantial violation of the right to life subsists. Indeed, an applicant must be able to demonstrate that natural

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situation appears in Oceania, where there are no regional approaches or agreements on human rights; nevertheless, in the 2005 Pacific Plan is expressed the commitment to defend and promote human rights. See: LEADERS OF THE PACIFIC ISLANDS FORUM, *The Pacific Plan: for Strengthening Regional Cooperation and Integration,* Pacific Islands Forum meeting, Port Moresby, 2005, available at https://www.adb.org/sites/default/files/linked-documents/robp-pacific-2013-2015-pacific-plan.pdf [Accessed 17 May 2021].

[522] UN, General Assembly, *Universal Declaration of Human Rights,* Paris, December 10th, 1948, Art. 3.

[523] UN, Human Rights Committee, *International Covenant on Civil and Political Rights* (ICCPR), December 16th, 1966, Art. 6.

[524] UN, General Assembly, *Convention on the Rights of the Child,* New York, November 20th, 1989, and entered into force on September 2nd, 1990, Art. 6.

[525] COUNCIL OF EUROPE, *European Convention for the Protection of Human Rights and Fundamental Freedoms* (European Convention on Human Rights), November 4th, 1950, Art. 2.

[526] OAS, *The American Convention on Human Rights* (Pact of San José)*,* San José, November 22nd, 1969, entered into force on July 18th, 1978, Art. 4.

[527] OAU, *The African Charter on Human and Peoples Rights* (Banjul Charter), Nairobi, adopted on June 27th, 1981, and entered into force on October 21st, 1986, Art. 4.

[528] LAS, *Arab Charter on Human Rights,* Council of the League of Arab States, Cairo, May 22nd, 2004, Art. 5.

[529] See Chapter 3, Paragraph 2 for *Teitiota v. New Zealand* judgement, and Paragraph 5 for *The State of the Netherlands v. Stichting Urgenda* judgment, where the same concept has been recalled by the Human Rights Committee's merits.

degradation had a 'multicausality' of negative impacts also on social, political, and economic factors; meaning that States have never granted their protection solely for the impacts of environmental deterioration[530]. Conversely, the legal recognition of the right to a healthy environment would pose primary attention on the natural element as the main source from which protection will be granted, as well as the obligation of environmental responsibility for States to secure a higher standard of environmental quality. Additionally, this approach would facilitate the access of enforcing environmental laws in judicial decisions[531]. Although a few provisions at a regional level have already incorporated such right[532], it has not reached yet a global acceptance; therefore, since the debate is centred on the environmental dimension of rights based on human rights treaties[533], in the next section the (r)evolutionary process of 'greening' the human rights will be analyzed. The main aim will be that of suggesting a solution to the current legal gap for the protection of environmental-induced migrants, as well as of proposing a reflection on the benefits of a multilateral approach to reach good global governance.

2. The 'greening' process of Human Rights Law in the context of environmental-induced migration

The 'greening' process of Human Rights Law focuses on the necessity of shifting the current paradigm, with regard to environmental and climate issues, from a pure anthropocentric approach to a more eco-centric perspective. In doing so, the legal consolidation of 'the right to a healthy environment' would be a self-standing right that could be invoked in front of Courts by

[530] MCADAM J., *Climate Change*, *Forced Migration and International Law*, Oxford, Oxford University Press, 2012, pp. 60-61.
[531] BOYLE A, Human Rights and the Environment: where next? in *Environmental Law Dimension of Human Rights*, Oxford, Oxford University Press, 2015, p. 202.
[532] See: OAU, *The African Charter on Human and Peoples Rights* (Banjul Charter), Nairobi, adopted on June 27th, 1981, and entered into force on October 21st, 1986, Art. 24 on "the right to have a healthy environment", and OAS, General Secretariat, *Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights*, El Salvador, adopted on November 17th, 1988, and entered into force on November 16th, 1999, Art. 11.
See also: Chapter 1, note 115, with regard to the Inter-American Court of Human Rights' decision on Indigenous Communities Members of the Lhaka Honhat Association v. Argentina, adopted on February 6th, 2020, which recognized for the first time the right to a healthy environment.
[533] BOYLE A., Human Rights and the Environment, op., cit., p. 203.

individuals or groups concerned[534]. Consequently, for the sake of this study, migrants and IDPs induced to move by environmental degradation and natural disasters could bring their cases in front of Courts and have this right recognized, functioning as a tool to acquire national, regional, and international protection. Therefore, it is clear that the right to have a healthy environment, here, is applied as a necessary instrument to constitute the legal protection basis that could complement the current legal void for all those episodes of human mobility, within or across borders, related to natural deterioration and climate change.

At this point of the thesis, it should be evident that the majority of States do not appear incline to incorporate, or to create, a treaty provision for the recognition of the right to a healthy environment due to the issue of environmental responsibility and its implications[535]; however, it has been also reported that national and regional Courts have been conducting their judgments towards an opposite direction, thus highlighting the interconnection between Human Rights Law, to which all States are bound, and Environmental Law. At the same time, the environmental discourse has rapidly increased the interest of the global city society, so as to spread the concept of 'environmental health' towards a more international acceptance[536]. The starting point of this evolutionary thought is credited to John Knox, who in the capacity of Independent Expert appointed by the Human Rights Council[537] wrote a report on the interdependence between human rights and the environment in 2012[538]. Moreover, in 2018, in the quality of Special Rapporteur on human rights and the environment, he wrote another report on the right to have a safe, clean, healthy, and sustainable environment[539].

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[534] DE VIDO S., Climate Change and the Right to a Healthy Environment, in *Environmental Sustainability in the European Union: Socio-Legal Prospective,* Trieste, EUT, 2020, pp. 109-110.

[535] See Chapter 3, Paragraph 1.

[536] DE VIDO S., Climate Change and the Right to a Healthy Environment, op., cit., p. 104.

[537] UN, General Assembly, Resolution A/HRC/RES/19/10 adopted by the Human Rights Council, Nineteenth Session, New York, April 19th, 2012, available at https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G12/131/59/PDF/G1213159.pdf?OpenElement [Accessed 19 May 2021].

[538] UN, General Assembly, *Report of The Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, *John H. Knox*, Twenty-second Session, A/HRC/22/43, New York, December 24th, 2012, available at https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-43_en.pdf [Accessed 19 May 2021].

[539] UN, General Assembly, Seventy-Third Section, *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/73/188 New York, July 19th, 2018, available at : https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/HealthySustainable.aspx [Accessed 20 May 2021], and Chapter 2, Paragraph 2.

In his first contribution, Knox argues that humans have always been aware of their dependence on the environment, and nevertheless, they have contributed to activities that have damaged it; therefore, damaging themselves[540]. He continues that since the 1960s the importance of environmental protection has become more evident, although still embedded within States' constitutions. The first, among these, was Portugal that in 1976 formulated a constitutional 'right to a healthy and ecologically balanced human environment', an example that was later followed by other States[541]. Consequently, in the aftermath of the 1972 Stockholm Declaration, the idea of having a clean environment has been perceived as necessary to the enjoyment of basic human rights, also at the international level. Although there is not yet a satisfactory universal agreement containing such provision, there are several regional human rights' agreements, drafted in the following years of the Declaration, that have included this right. In this regard, Knox lists the 1981 African Charter on Human and People's Rights, which provides that "*all people shall have the right to a general satisfactory environment favorable to their development*", and the 1988 Additional Protocol to the American Convention on Human Rights, which states that "*everyone shall have the right to live in a healthy environment*"[542]. To these, he adds also the 2004 Arab Charter on Human Rights, which includes a right to a healthy environment as part of the right to an adequate standard of living that ensures well-being and decent life[543], and the 2012 ASEAN Declaration, which incorporates the "*right to a safe, clean and sustainable environment"* as an element of the right to an adequate standard of living[544]. Furthermore, Knox points out that, at the European level, there is not an explicit consideration of the right to a healthy environment; however, the 1998 Convention on Access to Information, Public Participation in Decision-making and

[540] UN, General Assembly, *Report of The Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, *John H. Knox*, Twenty-second Session, A/HRC/22/43, New York, December 24th, 2012, para. 7.

[541] Ivi, para. 12. Other countries that recognize, within their constitutions, the human right to a healthy environment are Argentina, Colombia, Ethiopia, France, India, Italy, Mexico, Morocco, Peru, Spain, South Africa, and Thailand, but not only.

[542] Ivi, para. 13.

See also: OAU, *The African Charter on Human and Peoples Rights* (Banjul Charter), Nairobi, adopted on June 27th, 1981 and entered into force on October 21st, 1986, Art. 24 on "the right to have a healthy environment", and OAS, General Secretariat, *Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights*, El Salvador, adopted on November 17th, 1988 and entered into force on November 16th, 1999, Art. 11.

[543] Ibid.; See: LAS, *Arab Charter on Human Rights,* Council of the League of Arab States, Cairo, May 22nd, 2004, Art. 38.

[544] ASEAN, *The ASEAN Human Rights Declaration,* Phnom Penh, 2012, para. 28 (f).

Access to Justice in Environmental Matters makes reference to "*the right of every person of present and future generations to live in an environment adequate to his or her health and well-being*"[545]. Certainly, there have been other attempts at the international level, nonetheless, Knox affirms that these "*have concentrated not on proclaiming a new right to a healthy environment, but rather on what might be called "greening" human rights – that is, examining and highlighting the relationship of existing human rights to the environment*"[546].

As a consequence, Knox, in his second contribution, examines more in-depth the new so-called 'greening' process. He began by affirming that this process has been already actively conducted by several treaty bodies, regional tribunals, special rapporteurs, and other international human rights bodies, while describing how environmental degradation interferes with specific rights, namely the rights to life, health, food, water, housing, culture, development, property and home, and private life[547], which in the case at study may represent those pushing factors that induce to human mobility. In this discourse, Knox advances the framework principles, which summarize the procedural obligations of States[548], under Human Rights Law, with regard to the enjoyment of a safe, clean, healthy and sustainable environment[549]. These obligations must be undertaken by States through appropriate means that require them to take deliberate, concrete, and targeted measures towards the aim, according to their available resources[550]. Additionally, and most

[545] UN, General Assembly, Seventy-Third Section, *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/73/188 New York, July 19th, 2018, available at : https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/HealthySustainable.aspx [Accessed on 20th May 2021], and Chapter 2, Paragraph 2. See: UNECE, *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (Aarhus Convention), Aarhus, June 15th, 1998, Art. 1.

[546] UN, General Assembly, *Report of The Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, *John H. Knox*, Twenty-second Session, A/HRC/22/43, New York, December 24th, 2012, para. 16.

[547] UN, General Assembly, Seventy-Third Section, *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/73/188 New York, July 19th, 2018, para. 13.

[548] These are, for example, the States' duties to respect and protect the rights to freedom of expression, association, and peaceful assembly in relation to environmental matters; provide for environmental education and public awareness; provide public access to environmental information; require the prior assessment of the possible environmental and human rights impacts of proposed projects and policies; provide for and facilitate public participation in decision-making relate to the environment; and provide for access to effective remedies for violation of human rights and domestic laws relating to the environment.

[549] UN, General Assembly, Seventy-Third Section, *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/73/188 New York, July 19th, 2018, para. 14.

[550] Ivi, para. 15.

importantly, the framework principles also provide the substantive standards that States should implement gradually, so as to prevent environmental harms from human sources as well as ensuring a safe, clean, healthy, and sustainable environment. These standards must result from procedures that comply themselves with human rights obligations, considering the guidance of the World Health Organization (WHO) as well as the best available science on the matter, and by being balanced with the enjoyment of other social goals[551]. Undoubtedly, the obligations of States to achieve universal respect for and observance of Human Rights requires them to strongly cooperate one with another, in order to address transboundary and global environmental threats to human rights. As a matter of fact, States have already entered into agreements on many international environmental problems, including climate change, transboundary air and marine pollution, desertification, and the conservation of biodiversity; even though maintaining a soft law approach. Under this international cooperation, States are not all required to act in the same way, in reason of the fact that responsibility depends on each State socio-economic situation; consequently, States' agreements may appropriately tailor commitments taking into account their respective capabilities and challenges. Nevertheless, once these obligations have been defined each States must comply with them in good faith[552].

Finally, Knox concludes that Human Rights Law requires States to take special care to respect, protect, and fulfil the rights of those individuals who are most at risk from environmental harm, which, among others, include women, children, persons living in poverty, members of indigenous peoples and traditional communities, minorities, and displaced persons[553]. Along with the latter, particular attention must be devoted also to all those individuals outside of their country of origin because of natural disasters or other types of environmental harms. These critical instances, as repeatedly mentioned, may contribute to exacerbate already vulnerable situations, and lead to additional human rights violations[554]. Similarly, Knox recalls two important notes of the Secretary-General of the General Assembly about the reports of the Special Rapporteurs of IDPs and migrants' human rights for instances of environmental-induced movements, which

[551] UN, General Assembly, Seventy-Third Section, *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/73/188 New York, July 19th, 2018, para. 16.
[552] Ivi, para. 19-21.
[553] Ivi, para. 22.
[554] Ivi, para. 24.

propose a human rights-based action to manage this issue[555]. This discourse perfectly combines with the main assumption argued in the previous sections of this thesis, according to which action towards the protection of environmental-induced movements must be undertaken under a human rights-based approach able to address both mobility phases, and natural disaster responses.

The former Special Rapporteur Knox benefited from the precious collaboration of the current appointed Special Rapporteur David Boyd, whose book "*The Right of the Nature: a Legal Revolution that Could Save the World"* has significantly impacted the traditional conception of nature's rights and human's responsibility[556]. As a matter of fact, the above-cited shift of paradigm, that is necessary in order to conceive the right to a healthy environment, must be framed within a wider discussion that touches the rights of the nature; meaning that the issue of environmental deterioration and climate change needs to be understood within a more holistic approach[557]. In particular, the 2019 report of the Special Rapporteur focuses on how the effects of climate change impacts the enjoyment of fundamental human rights, which, among others, there is the right to a healthy environment[558]. He affirms that the latter is recognized by 155 State Members and that its substantive elements include "*a safe climate, clean air, clean water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems*". These commitments are the result of the ratification of international environmental treaties; consequently, if States fail to observe their obligations to reduce the impact of climate change, this can constitute a violation of the right to a healthy environment[559]. The obligations for States set by the report, under the framework principles on human rights and the environment, are of three kinds: procedural, substantive, and special obligations towards those in vulnerable situations, such as in the case of PSIDS. Moreover, differently from the report of the previous year, Boyd includes obligations for business corporations, which, among others, include the reduction of GHG emissions stemming from their

[555] UN, General Assembly, Sixty-Sixth Section, *Protection of and Assistance to International Displaced Persons*, Note by the Secretary-General, A/66/285, New York, August 9th, 2011, and Sixty-seventh Section, *Human Rights of Migrants*, Note by the Secretary-General, A/67/299, New York, August 13, 2012.
[556] BOYD D. R., *The Right of the Nature: a Legal Revolution that Could Save the World,* Toronto, ECW Press, 2017.
[557] DE VIDO S., Climate Change and the Right to a Healthy Environment*,* in *Environmental Sustainability in the European Union: Socio-Legal Prospective,* Trieste, EUT, 2020, p. 109.
[558] UN, General Assembly, Seventy-Fourth Section, *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/74/161, New York, July 15th, 2019.
[559] Ivi, para. 43-44.

activities, products, services, and suppliers, the public disclosure of their emissions, to support and not to oppose public policies to address climate change, and to assure that people affected by business-related human rights violations have access to effective remedies[560], whose victims are also part of the broad category of environmental-induced migrants and environmentally-displaced people.

How it can be evinced, this new paradigm is very hard to be acknowledged from a political point of view under many aspects, which some have already been analyzed[561]. Consequently, the international community is divided in two: on the one hand, there are States that are reluctant in accepting legal obligations to undertake measures in the field of natural deterioration and climate change; on the other hand, there are Courts and national parliaments, also urged by the civil society, that have successfully recognized the right to a healthy environment[562]. For example, this was the judgment of *Future Generations v. Ministry of the Environment*[563], a lawsuit that 25 Colombian youths brought against several bodies within the government of Colombia, in 2018.

In this judgment, the complainants alleged that the combination of climate change, and the failure of the government to minimize deforestation and to ensure compliance with the target of zero deforestation by 2020 in the Colombian Amazon – as agreed under the Paris Agreement and the National Development Plan 2014-2018 - threatened their fundamental rights to a dignified life, health, food, water, to enjoy of a healthy environment, according to the national constitutions[564]. The lower court did recognize the legitimization of the case; however, it did not grant the protection requested because of the procedural nature of the protection action, called '*tutela'*, which did not represent the appropriate mechanism for issuing the orders' subject of the petition, as it concerned a collective problem[565]. Consequently, in 2018 the complainants filed an appeal in front of the Supreme Court to revoke the decision of the first instance[566]. In the same year, the Supreme Court of Colombia revoked the previous sentence, and granted the protection requested

[560] UN, General Assembly, Seventy-Fourth Section, *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/74/161, New York, July 15th, 2019, para. 71-72.
[561] See Chapter 3, Paragraph 1.
[562] DE VIDO S., Climate Change and the Right to a Healthy Environment, in *Environmental Sustainability in the European Union: Socio-Legal Prospective,* Trieste, EUT, 2020, p. 110.
[563] TRIBUNAL SUPERIOR DE BOGOTÁ, *Future Generations v. Ministry of the Environment,* Bogotá, February 12th, 2018.
[564] Ibid.
[565] Ibid.
[566] Ibid.

by the applicants in light of the recognition of the fact that "*fundamental rights of life, health, the minimum subsistence, freedom, and human dignity are substantially linked and determined by the environment and the ecosystem*" [567]. Moreover, and most importantly, the Supreme Court emphasized the consolidation of the constitutional obligation for human solidarity with the nature, which can be reached only throughout the process of transcending from the traditional anthropocentric perspective into a more eco-centric understanding of the ecosystem, in which *also* -but not only- humans are situated[568]. From here, according to the Supreme Court, the relation of deep unity and interdependency between the nature and humanity finds its origins, which must be framed within a new socio-juridical understanding that recognizes the nature as a subject of rights[569]. Following this reasoning, the Supreme Court further recognized the Colombian Amazon as a subject of rights, and therefore it ordered the Colombian government to formulate and implement an action plan to address its deforestation.

What can be deduced from the above examination is that the will for a change in paradigm is already strongly practised at the national and regional level [570]. Furthermore, as already mentioned, the active participation of civil society and NGOs in decision-making processes, for the protection of the environment and climate change has demonstrated that its future consolidation as a norm of International Customary Law is not so far from being achieved[571]. Ultimately, if this would be reached, environmental-induced migrants could apply for protection on the basis of the satisfaction of the self-standing right to a healthy environment, whose violation was indeed the main cause for their initial movement. This conclusion leads to the fundamental acknowledgement that the 'greening' process of human rights would represent a valuable source of complementary protection for all those protection's claims that do not fall under the current legal system of international protection.

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[567] CORTE SUPREMA DE JUSTICIA, *Future Generations v. Ministry of the Environment,* Bogotá, April 5th, 2018.
[568] Ivi, p. 20.
[569] Ivi, pp. 40-50.
[570] Although not mentioned, it is important to underline that there have been similar juridical episodes also at the regional level. For example, the Advisory Opinion of the Inter-American Court of Human Rights, in which it was recognized the right to a healthy environment as a free-standing right, representing both an individual and collective dimension of the right. See: IACtHR, Advisory Opinion OC-23/17, San José, November 15th, 2017, available at https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf [Accessed 22 May 2021].
[571] DE VIDO S., Climate Change and the Right to a Healthy Environment, in *Environmental Sustainability in the European Union: Socio-Legal Prospective,* Trieste, EUT, 2020, p. 113.

2.1 The applicability of the ICCPR and the ICESCR in the case of environmental-induced movements: building cooperation

The previous analysis demonstrated how the 'greening' process of human rights would prove to be a satisfactory solution for the issue of granting international protection to environmental-induced migrants, as well as a revolutionary way to address environmental issues. This process, as asserted, is still in evolution and embedded in a national and regional 'environmental human rights jurisprudence', which however has positively revealed its signs of progress in the path towards the consolidation of the right to a healthy environment as a self-standing norm of Customary International Law.

That being said, in this section, I will investigate Human Rights' sources, already recognized at the international level, that could serve as a constitutive element of complementary protection, namely the International Covenant on Civil and Political Rights (ICCPR)[572] and the International Covenant on Economic, Social, and Cultural Rights (ICESCR)[573]. In particular, I will concentrate my research on their relevance for instances of cross-borders' human mobility induced by natural degradation; therefore, I will focus on the fundamental necessity of enlarging the scope of the concept of extraterritoriality. The latter will be applied with regard to human rights obligations for States in the context of environmental disasters harming individuals. While conducting my examination, I will show how, although some interpretations' issues, the role of extraterritoriality under the ICCPR and ICESCR would be a relevant element for complementary protection; however, this will be achieved only with a high degree of cooperation among States[574]. Consequently, under these terms, complementary protection would arguably solve the problem of environmental-induced migration. Finally, in light of this evidence, I will engage on the meaning of 'human rights approach' to environmental-induced migration, which was repeatedly mentioned in this study.

[572] UN, Human Rights Committee, *International Covenant on Civil and Political Rights* (ICCPR), December 16th, 1966, available at https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx [Accessed 6 June 2021].

[573] UN, Human Rights Committee, *International Covenant on Economic, Social and Cultural Rights* (ICESCR), December 16th, 1966, available at https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx [Accessed 6 June 2021].

[574] Certainly, this will be emphasized also by the work of other international actors, analyzed in Chapter 3, such as NGOs.

After the adoption of the 1948 UN Declaration of Human Rights (UDHR)[575], the General Assembly urged the Commission on Human Rights to draft a legally binding instrument containing the rights of the UDHR. This resulted in two separate Covenants bearing similar provisions: the ICCPR and the ICESCR. The Covenants have been adopted by the General Assembly in 1966, and together with the UDHR comprise the 'International Bill of Human Rights'[576]. As mentioned, both instruments elaborate rights set forth the 1948 Universal Declaration; more precisely, the ICCPR contains those regarding civil and political rights, such as, among others, Art. 1 (1) right to self-determination, Art. 6 (1) right to life, Art. 17 (1) right to privacy, and Art. 18 (1) right to freedom of thought, conscience and religion; while the ICESCR concerns the economic, social and cultural ones, such as, among others, Art. 9 right to social security, Art. 11 right to an adequate standard of living, Art. 12 (1) right to physical and mental health, and Art. 13 (1) right to education. Additionally, the two Covenants have a similar structure and a similar language. Finally, they both affirm that all human rights are interdependent and can be enjoyed only if conditions are created[577]. At this point, what is relevant is to understand how the enjoyment of human rights and universal freedoms, influenced by the physical manifestation of environmental deterioration, is subject to the responsibility of States under the notion of extraterritoriality; in particular, for cases encompassing individuals outside their jurisdiction claiming for international protection due to environmental damages[578].

At the moment, the extension of extraterritorial duties for States with regard to environmental human rights jurisprudence is quite confusing[579]; as a matter of fact, in the previous chapter, it has already been assessed that there are practical difficulties for establishing transboundary environmental responsibility for States[580]. Moreover, in view of the unclear provisions of extraterritoriality under both the ICCPR and the ICESCR, the international community has been giving different interpretations for its application. According to Article 2 (1)

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[575] UN, General Assembly, *Universal Declaration of Human Rights,* Paris, December 10th, 1948.
[576] UN, *The United Nations Human Rights Treaty System: an Introduction to the Core Human Rights Treaties and the Treaty Bodies,* The Human Rights Fact Sheet no. 30, Geneva, June 2005, pp. 6-7.
[577] Ivi, p. 7.
[578] MCINERNEY LANKFORD S., *Climate Change and Human Rights: an Introduction to Legal Issues,* Harvard Environmental Law Review, Vol. 33, No. 2, June 2009, p. 433.
[579] KNOX J. H., *Climate Change and Human Rights Law*, Essay, Virginia Journal of International Law, Vol. 50, No. 1, 2009, p. 201.
[580] See Chapter 3, Paragraph 3.2.

of the ICCPR "*Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant*"[581]; therefore, it has been interpreted as limiting States' duties to individuals and territory under the effective control of the State. In more simplified words, the requirement of both territory and jurisdiction must be met for the ICCPR obligations to be applied[582]. Certainly, this in the case of environmental degradation is hard to be demonstrated. Conversely, Article 2 (1) of the ICESCR states that "*Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures*"[583]; consequently, it clear that provides a stronger basis for extraterritorial duties for States[584].

For what concerns the first of the two interpretations, which is limiting the extension of extraterritoriality for States, the ICJ along with the HR Committee have argued that the language of the provision must be read disjunctively; meaning that each State Party must respect and ensure the rights of both those within the national territory *and* those subject to its national jurisdiction[585]. Additionally, following the General Comment on Article 2 (1) of the ICCPR formulated by the HR Committee, "[…] *a State Party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party*"[586]. Undoubtedly, this approach highlights a broader meaning of the extraterritoriality of human rights for States. Nevertheless, currently, there is not yet an authoritative body that has declared whether transboundary environmental harm may bring victims under the effective control of the State where the harm has originated. Moreover, the ECtHR and

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[581] UN, Human Rights Committee, *International Covenant on Civil and Political Rights* (ICCPR), December 16th, 1966, Art. 2 (1).

[582] MCINERNEY-LANKFORD S., DARROW M., AND RAJAMANI L., *Human Rights and Climate Change: A Review of the International Legal Dimensions*, a World Bank Study, Washington D.C., The World Bank, March 17th, 2011, pp. 40-41.

[583] MCINERNEY LANKFORD S., *Climate Change and Human Rights: an Introduction to Legal Issues,* Harvard Environmental Law Review, Vol. 33, No. 2, June 2009, p. 433.

[584] MCINERNEY-LANKFORD S., DARROW M., AND RAJAMANI L., *Human Rights and Climate Change,* op. cit., p. 41.

[585] KNOX J. H., *Climate Change and Human Rights Law*, op., cit., p. 202.

[586] UN, Human Rights Committee, General Comment no. 31 [80], the Natura of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, May 26th, 2004, para. 10.

the IACtHR have examined other possibility to enlarge the exterritorial harm within the European and American Convention jurisdictions, which are similar to that of the ICCPR[587]. In this regard, the IACtHR has proved to have a more elastic view in considering extraterritorial duties, for example, when it was called to judge upon the *Alejandre v. Cuba case* in 1999[588]. Here, it stated that the agents of the Cuban government by shooting at an unarmed plane over international waters have placed the civilian pilots under their authority, satisfying in this way the jurisdictional requirement enshrined in the American Convention; thus, that States' obligations to respect human rights continue also outside the national territory[589]. On the other hand, concerning the European Convention, it has been evidenced that the Convention focuses on whether *individuals* affected by *States' actions* are within the State' jurisdiction, instead of addressing the question of whether the *actions* undertaken by the State are within its jurisdiction. Indeed, following this logic, if the affected individuals are not within the State' s jurisdiction, the State does not 'owe' them any duty, independently from the fact that the original source of the harm was or not under its jurisdiction[590]. Actually, in this regard, Boyle observed that the effects of the State's actions are those that should be subject to extraterritoriality; certainly, if this will not be recognized, it will pose huge limitations with regard to transboundary environmental harm[591].

At this point, due to the constraints posed by the ICCPR in terms of extraterritoriality, the international community has posed its attention towards the provisions of the ICESCR. In this respect, with the acknowledgement of States' obligations only towards individuals, the ICESCR has asserted that States in a position to assist other States to meet those obligations are required to do so, so as to enlarge the obligations' spectrum in order to provide long-term assistance as well as to respond to sudden emergencies. According to this view, richer States should support poorer States to pay costs of adaptation and mitigation strategies; a proposition that, however, encounters a certain degree of reluctance from developed States[592]. To solve this issue, Matthew Craven

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[587] KNOX J. H., *Climate Change and Human Rights Law*, Essay, Virginia Journal of International Law, Vol. 50, No. 1, 2009, p. 203.

[588] IACtHR, *Alejandre v. Cuba Case*, Case no. 11.589, Report no. 86/99, September 29th, 1999, available at https://www.cidh.oas.org/annualrep/99eng/Merits/Cuba11.589.htm [Accessed 8 June 2021].

[589] Ibid, para. 25.

[590] KNOX J. H., *Climate Change and Human Rights Law*, op., cit., p. 203, note 190.

[591] BOYLE A., *Human Rights or Environmental Rights? a Reassessment,* Fordharm Environmental Law Review, Article 5, Vol. 18, No. 3, pp. 471-511, The Berkeley Electronic Press, 2006, p. 500.

[592] MCINERNEY-LANKFORD S., DARROW M., AND RAJAMANI L., *Human Rights and Climate Change: A Review of the International Legal Dimensions*, a World Bank Study, Washington D.C., The World Bank, March 17th, 2011, p. 42.

observed that one solution would be that of requiring each State not to interfere with other States' ability to meet their obligations; in other words, to ensure that States' actions do not undermine the enjoyment of the human rights of individuals in foreign territories. As it can be observed, this would represent an extraterritorial extension for States with regard to their obligations to respect human rights[593]. The same could be arguably envisaged for third parties that operate under the jurisdiction or the control of States, such in the case of TNCs[594].

As shown by the above analysis, there are several potential solutions to extend the extraterritorial duty of States, under Human Rights Law, in order to encompass also problems arising from environmental degradation and climate change. Certainly, this would be applicable also for instances of environmental-induced migration, as when an individual or a group of individuals apply for international protection caused by an environmental harm, it is evident that the enjoyment of civic, political, social, economic, and cultural rights is compromised; for example, this was the case of the PSIDS, as extensively reported in Chapter 1.

Nevertheless, what is fundamental is not to misunderstand the solution of the threat posed by climate change and environmental degradation through a set of individual transboundary harm obligations, rather than with a global answer for a universal threat to all human rights. In this discourse, in order to achieve a holistic solution for such a global problem, what is necessary is international cooperation, as also evidenced by Art. 2 (1) of the ICESCR. As a matter of fact, it was already discussed in this chapter that States have implemented cooperation via the establishment of international agreements[595]; howbeit, some scholars have proposed a more 'non-legal' approach based on a 'value-added' in the promotion of a wider vision and awareness of human rights, which will also touch environmental and climate change[596]. To a certain extent, this vision would work in parallel with the 'greening' process of human rights, because it proposes to change the paradigm for claiming the legitimacy of human rights by adding a moral value as an indispensable part to respect human rights and related subjects; in this case, the global environment so as not to induce to displacements or migrations of people.

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[593] MCINERNEY-LANKFORD S., DARROW M., AND RAJAMANI L., *Human Rights and Climate Change: A Review of the International Legal Dimensions*, a World Bank Study, Washington D.C., The World Bank, March 17th, 2011, p. 43. See: CRAVEN M. C. R., *The International Covenant on Economic, Social, and Cultural Rights: a Perspective on its Development,* Oxford, Clarendon Press, July 2nd, 1998.

[594] Ibid.

[595] See Chapter 4, Paragraph 2.

[596] MCINERNEY-LANKFORD S., DARROW M., AND RAJAMANI L., *Human Rights and Climate Change,* op., cit., p. 27.

Conventionally, the expression 'human rights approach' refers to a general development practice, rather than to a binding human rights legal standard. Indeed, it can be argued that it finds similarities in the provisions contained in the already cited Aarhus Convention[597] and the 1992 Rio Declaration's Principle 10[598]. However, the term 'human rights approach' with regard to environmental and climate change implies a more holistic vision of the applicability of human rights as an empowering element and framework to envisage the necessary political and social shift, with which will be consequently possible to produce a change in the international legal system[599]. This represents the underlining meaning of the aforementioned 'value-added' with regard to a 'human right approach' for environmental matters, from which the issue of environmental-induced migration could be complemented and addressed. This argument will be deepened at the end of this chapter, so as to conclude the overall analysis towards the solution of the problem of granting protection for instances of environmental-induced migration, throughout a multilayered approach able to fill the current international legal gap.

3. Temporary protection and its applicability in the context of environmental-induced migration: a comparison between the American and the European jurisprudential response

Although it has been affirmed that complementary protection must not be confused with the notion of temporary protection[600]; in this section, I would like to propose a comparison between the American and European jurisprudence with regard to its applicability in response to situations of natural disasters. As mentioned, its resort consists of a short-term relief facing huge numbers of asylum requests that cannot find a legal basis under the current international protection system. Not surprisingly, in recent years, requests for this type of protection have also emerged from episodes of environmental and climate change; however, among others, because of its nature of being a provisional tool, temporary protection cannot be a long-term answer to the problem of environmental-induced migration.

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[597] UN, Economic Commission, *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (Aarhus Convention), Aarhus, June 15th, 1998.
[598] UN, General Assembly, *Rio Declaration on Environment and Development* (Rio Declaration), Rio de Janeiro, June 14th, 1992, Principle 10.
[599] MCINERNEY-LANKFORD S., DARROW M., AND RAJAMANI L., *Human Rights and Climate Change: A Review of the International Legal Dimensions*, a World Bank Study, Washington D.C., The World Bank, March 17th, 2011, p. 28.
[600] See Chapter 4, Paragraph 1.

In the European context, temporary protection is an exceptional measure, which provides immediate and limited protection to individuals coming from non-European Countries and unable to return to their States of origin. It originates from the need of finding a solution to the mass influxes of displaced persons, stemming from conflicts in the former Yugoslavia and in Kosovo during the 1990s. Consequently, the Council of the European Union in 2001 formulated the Temporary Protection Directive (TPD)[601], which nowadays applies only when the standard asylum system is lacking the capacity to cope with a high number of protection requests that could impact negatively the overall European asylum processing system[602]. Therefore, the role of the TPD is that of defining the decision-making procedure to trigger, extend or end temporary protection, but only in cases of 'mass influxes' and not for those involving individual applications[603]. The TPD includes the enjoyment of some rights for the beneficiaries, such as the release of a resident permit for the entire duration of the protection period, the access to employment and housing, as well as to social welfare, medical treatment, and schooling for minors, and the opportunity to reunite families and to apply to the normal asylum procedure. Finally, the TPD also contains provisions concerning the return of displaced persons to their States of origin[604].

Certainly, the TPD is a unique mechanism for addressing sudden displacements and migrations' crisis arising from armed conflicts, endemic violence, or generalized human rights violations; however, for the sake of this study, the European temporary protection system lacks a precise reference to environmental disasters intended as a source of the initial movement, as well as the cause of the inability of applicants to return to their States of origin[605]. Furthermore, it has been proved that this mechanism has encountered some political difficulties due to the European pressure on national systems with regard to asylums reception and procedures. As a matter of fact, some State Members restrained the implementation of the TPD in view of the generous level of

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[601] *European Council 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,* Official Journal of the European Communities, Bruxelles, July 20th, 2001.

[602] EUROPEAN COMMISSION, Migration and Home Affairs, *Temporary Protection:* https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/temporary-protection_en [Accessed 10 June 2021].

[603] KRALER A., CERNEI T., AND NOACK M., *"Climate Refugees", Legal and Policy Responses to Environmentally Induced Migration*, European Parliament, 2011, p. 55.

[604] See note 602.

[605] MCADAM J., *Climate Change*, *Forced Migration and International Law*, Oxford, Oxford University Press, 2012, p. 102.

rights that it grants, which arguably could constitute a 'pull factor' to increment movements towards Europe with the hope of having recognized temporary protection[606]. Additionally, during the negotiation process of the Directive, some State Members have argued that the element of a natural disaster should have been recognized as a ground for protection; nevertheless, until now it does not appear any formal discussion about this expansion[607]. Finally, given the evidence on the likely nature of environmental and climate change-related movements, it remains uncertain the EU positions towards a potential mass influx stemming from natural-affected countries, and whether it would be willing to grant exceptional temporary protection or not[608].

Conversely, in the American system, temporary protection is granted to people of certain Countries experiencing problems that render unsafe the return for their nationals. The American Congress created the Temporary Protection Status (TPS) after the promulgation of the Immigration Act of 1990[609] aiming at a temporary immigration status to be granted to nationals of specific Countries confronting ongoing risky situations, namely armed conflicts, such in the case of civil wars; environmental disasters, such in the case of earthquakes or hurricanes; and other relevant extraordinary and temporary conditions[610]. Similar to the European TPD, the TPS does not provide beneficiaries with the possibility to hold a future resident permit, and it grants them the possibility to work within their temporary status. However, unlike the first, it provides a stay of deportation to foreign nationals of the concerned Countries, the eligibility for advance parole, which allows immigrants to travel abroad and return to the United Sates via a separate application, but it does not grant any public assistance[611]. Crucially, the TPS allows temporary protection on the basis of the objective conditions of the Country of origin, rather than on the specific circumstances of the individual applying for protection; consequently, at the termination of the protection status individuals cannot apply for the traditional asylum procedure. Additionally, the

[606] EUROPEAN COMMISSION, A Study on the Temporary Protection Directive, Final Report, Bruxelles, January 2016, pp. 34-35.
[607] MCADAM J., *Climate Change*, *Forced Migration and International Law*, Oxford, Oxford University Press, 2012, p. 102.
[608] Ivi, p.103.
[609] AMERICAN CONGRESS, Immigration Act of 1990, Public Law 101-649, Washington D. C., 29th November 1990.
[610] U.S. CITIZENSHIP AND IMMIGRATION SERVICES, Temporary Protected Status: https://www.uscis.gov/humanitarian/temporary-protected-status [Accessed 10 June 2021].
[611] AMERICAN IMMIGRATION COUNCIL, *Temporary Protection Status: an Overview,* Washington D.C., June 2021, pp. 2-3.

TPS only benefits foreign nationals already in the territory of the United States at the time of the natural disaster, and whose national government has requested assistance under this mechanism[612]. Finally, the Secretary of Homeland Security (SHC) will have the final duty to designate eligible nationals, which at the moment are from Burma, El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, South Sudan, Sudan, Syria, Venezuela, and Yemen[613].

After this short comparison of the temporary protection systems at the European and American level, what is fundamental is to highlight that the applicability of temporary protection in the environmental jurisprudence has developed in a different way between the two regional systems[614]. On the one hand, the jurisprudence of the ECtHR is characterized by a high degree of uncertainty with regard to the scope of procedural environmental rights; a condition that is favorized by the absence of a right to a healthy environment, as already underlined[615]. On the other hand, the environmental experience of the IACtHR is more advanced. Although the 1999 Additional San Salvador Protocol to the American Convention on Human Rights has proclaimed the right to a healthy environment[616], as discussed in paragraph 2 of this chapter, this is not yet recognized as a legal basis for individual petitions before the IACtHR. Nevertheless, in this regard, the role of the American Commission on Human Rights (IACommHR) has been significant in trying to let emerge a special value to strengthen the observance of participatory environmental rights, as well as to let emerge a more concrete environmental jurisprudence in the Inter-American system[617]. In particular, the expression 'participatory environmental rights' refers to the right of citizens to information and participation in the decision-making process, and to the access to justice in environmental matters; especially, with regard to the right to create organizations, such as environmental NGOs, in order to carry out common activities towards the exercise of activities aimed at environmental protection[618]. In this discourse, the *Kawas-Fernández v. Honduras*

[612] MCADAM J., *Climate Change*, *Forced Migration and International Law*, Oxford, Oxford University Press, 2012, p. 100.
[613] AMERICAN IMMIGRATION COUNCIL, *Temporary Protection Status,* op., cit., p. 4.
[614] BOER B., *Environmental Law Dimension of Human Rights*, Oxford, Oxford University Press, 2015, p. 69.
[615] Ivi, p. 70.
[616] OAS, General Secretariat, *Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights*, El Salvador, adopted on November 17th, 1988, and entered into force on November 16th, 1999, Art. 11.
[617] See note 615.
[618] Ivi, p. 72.

judgment of the IACtHR sets a perfect example[619]. The judgment concerned a claim involving the murder of an environmental activist regularly fighting against development projects affecting the natural environment of Honduras. According to an environmental perspective, the decision of the IACtHR is noteworthy because, apart from the reference to Art. 4 of the ACHR concerning the right to life, the Court accused Honduras of being in breach of the right to freedom of association under Art. 16 of the ACHR[620]. Importantly, the Court affirmed:

> […] Article 16 of the American Convention also includes the right of individuals to set up and participate freely in non-governmental organizations, associations or group involved in human rights monitoring, reporting and promotion. Given the important role of human rights defenders in democratic societies, the free and full exercise of this right imposes upon the State the duty to create the legal and factual conditions for them to be able to freely perform their task. […] In connection with said acknowledgement, this Court finds it appropriate to point out that the defense of human rights is not limited to civil and political rights, but necessarily involves economic, social and cultural rights monitoring, reporting and education, in accordance with the principles of universality, indivisibility and interdependence enshrined in the American Declaration of the Rights and Duties of Man, the American Convention, and the Inter-American Democratic Charter and upheld by this Court in its case law […][621].

From this statement, it is clear the relevance of the participatory factor in environmental rights of the American jurisprudence. However, beyond this acknowledgment, this judgment is significant also because of the reference to the long-standing ECtHR jurisprudence in environmental matters. As a matter of fact, the IACtHR continued stating that: "*in accordance with the case law of this Court and the European Court of Human Rights, there is an undeniable link between the protection of the environment and the enjoyment of other human rights*"[622]. With these words, the IACtHR adduced at the European environmental experience for judgements such

[619] IACtHR, *Kawas-Fernández v. Honduras*, San José, April 3rd, 2009, available at https://www.refworld.org/cases,IACRTHR,5e67c8ab4.html [Accessed 10 June 2021].
[620] OAS, *The American Convention on Human Rights* (Pact of San José), San José, November 22nd, 1969, and entered into force on July 18th, 1978, Art. 16.
[621] IACtHR, *Kawas-Fernández v. Honduras*, San José, op., cit., para. 146-147.
[622] Ivi, para. 148.

as *López Ostra v. Spain*[623], *Guerra and Others v. Italia*[624]; therefore, it can be argued that the *Kawas-Fernández v. Honduras* judgement can serve as a promising example of dialogue and cross-fertilization between the ECtHR and the IACtHR pertaining to environmental issues. Finally, as aforementioned, concerning procedural environmental rights, what has emerged is that the IACtHR has been playing a pivotal role thanks to its wider interpretations and conceptions of these guarantees, in comparison with the more problematic approach presented by the ECtHR[625].

Undoubtedly, what can be extrapolated by this comparison is that the more exhaustive approach of the American jurisprudence on the subject of environmental issues has rendered natural disasters a valid ground for the grant of temporary protection, in view of the lack of a proper provision at the international level.

Despite this valuable recognition, as it has been noted, TPS can be beneficed only by the nationals of the Countries that have requested this mechanism of provisional protection. Significantly, the designation of the TPS is subject to the declaratory duty of the SHC; therefore, the event of a natural hazard does not automatically lead to the admission to the temporary mechanism, unless expressly declared by the SHC and, if this will be the case, only for the period designed by the latter. In this context, it is worth mentioning the case of Nepal, which in 2015 was devasted by a massive earthquake that demolished a huge number of housing and infrastructures. Consequently, the then SHC designed Nepal as Country for TPS for a period of 18 months. Subsequently, the TPS was extended for additional 18 months; but this designation terminated in 2018 when it was assessed that Nepal had restored its original conditions under which it was able

[623] This case is significant because showed the interdependence between both civil and political rights and the economic, social, and cultural rights. Indeed, often protecting civil rights, such as the right to private and family life involves also the protection of conomic, social ,and cultural rights, such as the right to a healthy environment and the right to health. Particularly, in this case, the ECtHR ruled that: "*severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely*" making reference to Art. 8 of the ECHR. See: ECtHR, *López Ostra v. Spain*, (Application no. 16798/90), Strasbourg, December 9th, 1994, para. 51.

[624] In this case the ECtHR, among others, was asked to judge whether national authorities had taken the necessary steps to ensure effective protection of the applicants' right to respect for their private and family life, always under Art. 8 of the European Convention. Finally, citing the *López Ostra v. Spain* case, the ECtHR reaffirmed that: "*severe environmental pollution could affect the individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely*"; therefore, the Italian State was found in violation of Art. 8. See: ECtHR, *Guerra and Others v. Italy*, (Application no. 14967/89), Strasbourg, February 19th, 1998, para. 60.

[625] BOER B., *Environmental Law Dimension of Human Rights*, Oxford, Oxford University Press, 2015, p. 74.

to adequately handle the return of its nationals[626]. Consequently, it is evident that this approach presents some limitation.

In conclusion, what can be underlined by this analysis is that, in the American system, the period in which temporary protection can be granted is limited, and it does not lead to the right to a permanent relocation. Moreover, the natural element from which the protection can be granted encompass only 'sudden' events, such as hurricanes and earthquakes; therefore, it does not take into account the gradual deterioration of the environment stemming from, among others, climate change and sea-level rise. Additionally, applicants to have this right recognized necessitate to be already in the territory of the United States at the moment of the natural hazard, and that their national governments have requested assistance within the TPS mechanism, whose request is subordinated to the SHC final designation. These limitations, along with the before mentioned problematics and uncertainties of the European system, confirm the thesis that temporary protection is not a suitable tool for instances of environmental-induced migration.

4. Drawing conclusions: filling the legal protection gap

In this last section, I will try to connect all the elements that have been analyzed so far with regard to the gaps and challenges of the current international protection system, concerning the phenomenon of environmental-induced migration. In this respect, the intention will be that of collecting the possible solutions, deduced during the analysis, to the issue at study, Therefore, in order to proceed, I reckon it essential to state again the salient features of this examination, namely, definitions, legal systems, and actors concerned with their propositions.

At the beginning of this work, in the chapter dedicated to the introduction and the evolution of environmental-induced migration, it was clearly affirmed that there is not a universal legal definition for movements induced by environmental conditions. The reason for this legal vacuum stems from the multicausal nature of the link between migrations and displacements in relation to environmental changes. As it has been extensively discussed, this impacts the socio-economic, legal, and political sphere of the international system, which, inevitably, triggers the whole global

[626] However, the termination has not yet taken effect due to legal challenges. WILSON J. H., *Temporary Protected Status and Deferred Enforced Departure*, CSR Report, RS20844, May 28th, 2021, p. 13.

governance. Consequently, the necessity of formulating a recognized definition, which is still missing, is fundamental in order to properly address the problem at study. By consequence, it has been demonstrated that the usual reference to the use of the term 'refugee' is a misnomer, in consideration of the fact that it implies the enjoyment of international protection under the legal system of the 1951 Refugee Convention, which appears limited for the requirements of the phenomenon at study[627].

As a matter of fact, in the chapter dedicated to the sources of the current system of international protection, it has been asseverated that in order to enjoy the protection under the 1951 Refugee Convention and its 1967 Addition Protocol, people applying for international protection must be able to prove that an element of persecution, from which they are fleeing, subsists. Moreover, the presumed persecution must arise from five essential grounds: race, religion, nationality, membership in a particular social group and political opinion, which are the result of the specific needs of the period in which the Convention has been established. Obviously, in view of the lack of a direct reference to the natural element, the term 'refugee' and the current system of international protection is not a suitable tool for instances of environmental-induced migration. Additionally, its applicability would pose constraints for all the environmental-induced movements that occur within national borders[628].

At this point, what was fundamental in order to advance in the examination was the acknowledgement of the current incompatibility, at the international level, between the legal nature of an individual to have the right of the refugee status, and the legal nature of an individual to have the right to live on a healthy environment. Necessarily, in order to achieve the recognition of this right, this study proposed the resort to complementary protection as a tool to enable the use of sources of Human Rights Law, with the purpose of establishing a legal basis from which the protection for cases of environmental-induced migration can be granted. This premise, among others, has led to the conclusion that there is the need of shifting the traditional paradigm from a mere anthropocentric point of view into a more eco-centric perspective with regard to the eco-system, in which humans are not the exclusive subjects. This approach finds its roots in the evolutionary process of 'greening' the Human Rights, which, as reported, currently is burgeoning in the American jurisprudence. Therefore, although the missing reference of the natural element

[627] See Chapter 1.
[628] See Chapter 2.

at the international level, it was evidenced that the latter is present in several national and regional systems, meaning that the path for the recognition of a healthy environment as a ground to grant protection is not so far from being accomplished[629].

While conducting the research, a chapter has been devoted to the actors that constitute the international system, namely States, IOs, TNCs, and NGOs; whose implication towards the development of policy responses for the phenomenon of environmental-induced migration has been peculiar. Importantly, it has been highlighted the experience of New Zealand in serving as a model for developed States in implementing manoeuvrings of adaptation, as well as the involvement of other States-led responses such as the Nansen Initiative; the accomplishments of the IOM and the UN in relation to human mobility and climate change, such as the creation of an *ad hoc* negotiation forum for the issue of climate change, thus the UNFCCC; and the extraordinary participation and influence of the civil society in relation to the enforcement and the effective practice of rights concerning the protection of the environment. Decisively, among these, has been the contribution of national and regional Courts, whose significant interpretation of the Law in their final judgments has been permitting the transit from a traditional way of confronting environmental problems into a more revolutionary one[630].

In conclusion, the interplay of different actors, unchallengedly, has proved beneficial in the process of changing the current paradigm encapsulated in a purely anthropocentric view of the juridical system of rights into a more eco-centric perspective, from which the natural element is understood as a subject 'holder of rights' and that is coexisting with human beings. Following this reasoning, the present study has advanced the thesis that it will be possible to recognize the right to have a healthy environment as a universal human right, from which the legal basis to grant protection to people forced to move because of environmental hazards and climate change can be possible. Ultimately, to achieve this goal I find interesting the view of some scholars that believe in the application of a 'human rights approach' based on a more holistic conception of human rights, which also comprehend a general development practice. As introduced in Paragraph 2.2, its realization necessitates a multilayered approach, which urges the cooperation of all the actors of the international system for a common good. By building this new framework, the present study argues that an evolution of the current international system of protection will be possible, so as to

[629] See Chapter 4.
[630] See Chapter 3.

properly address the issue of environmental-induced migration also in legal terms. I will demonstrate it in the next section.

4.1 A multilayered approach to strengthen good global governance

Global governance has been described as the universal order that originates from the interaction of different elements, such as institutions, processes, norms, agreements, and informal mechanisms, which aim at regulating actions towards a common good. As it can be perceived, global governance encompasses activities that operate beyond the national boundaries, developing into transnational, regional, and international contexts. Therefore, necessarily, global governance involves the harmonization of laws and practices among States, International regimes, IOs, and other public and private actors, such as TNCs and NGOs[631]. The methods utilized to spread this approach are a combination of agreed-upon standards, evolving treaty-based norms established on shared values, initiatives, and directives, which, via a high degree of cooperation among all the actors of the international system are ultimately enforced by States' governments. Consequently, global governance is the result of a network of governances[632].

However, as it has been argued, when States as primary actors of the international system fail in delivering good governance, justice, and peace into practice, the role of other non-State actors has been demonstrating to produce a significant contribution in providing assistance. As a matter of fact, during this examination, it has been proved that NGOs and Courts have grappled problematics regarding environmental and climate change, by successfully offering an active and inclusive picture of cooperation, which is necessary to build multilayered governance[633].

In this discourse, the starting point for understanding the importance that global governance is acquiring in today's debate on global environmental problems is the acknowledgement that no effective action can be undertaken and then implemented if States' governments are not supported by the business sectors (TNCs) and the local organizations of citizens (NGOs). Furthermore, to

[631] KENNETTE B., Global Governance, in *International Encyclopedia of the Social & Behavioral Sciences* (Second Edition), WRIGHT J. D. (ED. BY), Elsevier Ltd., 2015, pp. 155-161.
[632] COMMISSION ON GLOBAL SECURITY, JUSTICE AND GOVERNANCE, *Confronting the Crisis of Global Governance,* Report of the Commission on Global Security, Justice & Governance, The Hague Institute for Global Justice and The Stimson Center, Washington D.C., June 2015, pp. 8-9.
[633] Ivi, p. 15, and p. 39.

solve the 'anthropogenic' nature of environmental problems, good global governance must be established through elements such as openness, participation, accountability, coherence, trust, and civic peace[634]. Certainly, these factors, require a major public sector reform, as well as a shift in the approach to the global environment, which should be based on a more rights-based vision that adds a 'value' to the global ecosystem. For example, this approach has been demonstrated through the activity of NGOs, which are becoming more environmentalist, such as in the *Urgenda* case. Particularly, as reported, they are creating a new pervasive sensibility, that is shaping also international negotiations and judgements on environmental matters[635], such as in the case of the American jurisprudence[636].

Despite these successful outcomes, problems lie in how to translate these actions into effective achievements at the global level. In this respect, multilayered governance, which refers to the importance of the multi-level and multi-actor approaches in the management of an issue, will be the ideal solution, as it implies the inclusion of all the actors of the international arena in order to achieve a more democratic system. In this regard, the expression multi-level refers to the need to combine national government's actions with local, regional, and international ones; while the term multi-actor points out that national government's actions necessitate being accompanied by the involvement of IOs, TNCs, and NGOs.

Conclusively, as it was affirmed at the beginning of this dissertation[637], in reason of the fact that good governance also means to link mitigation and adaptation strategies, I will conclude by giving some practical examples for the issue at study. In terms of mitigation, considering cooperation among countries, it can be advanced the creation of an international legal basis able to address the issue of environmental-induced migration such as the recognition of the right to a healthy environment[638]; in terms of adaptation, envisaging the enhancement of international initiatives, it can be made reference to The Nansen Initiative, which, among others, allows the capacity building of the most vulnerable[639]. Therefore, it is evident that this cooperative approach

[634] BLEWITT J., *Understanding Sustainable Development,* 3rd edition, London, Routledge, 2018, pp.151- 153, and pp. 155-164.
[635] See Chapter 3, Paragraph 5.
[636] See Chapter 4, Paragraphs 2 and 2.1.
[637] See Chapter 1, Paragraph 3.1.
[638] See Chapter 2, Paragraph 5, and Chapter 4, Paragraphs 1 and 2.
[639] THE NANSEN INITIATIVE, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, Volume I, December 2015. See Chapter 3, Paragraph 1.

might be a suitable solution for the gaps and challenges in the current legal system of international protection in relation to the phenomenon of environmental-induced migration.

CONCLUSION

This thesis was mainly driven by one question: are individuals induced to move, in the foresee or in the aftermath of environmental disasters, protected by any instruments of International Law? After reading this dissertation, it is clear that the answer is negative; therefore, it has been suggested a different approach to address the question at issue. As matter of fact, this thesis has tried to subvert the current incompatibility, at the international level, between the legal nature of an individual to have the right to international protection, and the legal nature of an individual to have the right to live in a healthy environment. In this respect, this work has contributed to rethinking the 'traditional' way in which the natural element is understood, in order to build a new framework that acknowledges the legal nexus between the environment and human mobility. As extensively explained, this connection arises from the resort to complementary protection, reflecting the fertilization of environmental norms in Human Rights Law.

The examination started with the introduction of the phenomenon of environmental-induced migration. It was recalled that the first research on this matter started already in the 1970s and it led to the conclusion that the literature on the phenomenon at study is divided into two perspectives, which reflect on the one hand, those arguing that there is not a direct connection between the environment and human mobility; conversely, on the other hand, those arguing that the environment is the primary cause for migration. From the latter, it has also been discussed that, in addition, natural disasters present economic, political, and social consequences that spread around the world differently. Indeed, as it was deeply conferred, if on the one side, environmental-induced migration threatens the sovereignty of the hosting States and the international security; on the other side, it menaces the survival of the most vulnerable individuals, which normally are from LDCs. In light of these divergencies, the investigation proceeded towards the evolution and the efforts of the international community in trying to provide a legal definition to establish a possible legal framework.

The lack of the adoption of an internationally binding treaty has somehow made possible the existence of a quite consistent number of definitions such as, among others, 'environmental migration', 'climate change-induced migration', 'environmental or climate refugees', 'eco-refugees', 'climate change migrants', and 'environmentally displaced persons'. In consideration of these attempts, it was pointed out that a fundamental problem lied in the resort to the use of the term 'refugee', which, unquestionably, was posing individuals affected by environmental disasters

under the same protection mechanism of individuals escaping from persecutions, namely the 1951 Refugee Convention[640]. At this point, it was examined the implications of the employment of the term 'refugee', which appeared not suitable for the case at study, in view of the considerable range of determinants shaping the modalities and the causes of natural displacements, as well as the consequent policy responses, which are still embedded in a national framework. Indeed, as it was often mentioned, natural disasters hazards can be classified in two different categories: sudden-onset natural disasters and slow-onset natural disasters. The first refer to unexpected natural events such as, among others, earthquakes and volcanic eruptions; on the contrary, the second include gradual-occurring deterioration, such as, among others, temperature increase and loss of biodiversity. Therefore, it is evident that individuals concerned may also be induced to move before the actual natural hazard has occurred. This was the case of *Teitiota v. New Zealand*[641], in which a Kiribati national and his family was refused the concession of refugee status by the State of New Zealand, because the applicants were lacking, under traditional Migration and Refugee Law, the substantial requirements to have international protection granted. Nevertheless, Courts' judgments have envisaged the possibility of environmental degradation to find a pathway into the jurisdiction of Human Rights Courts; an aspect that was fundamental to push forward this work.

In consideration of this normative gap, individuals who migrate for environmental reasons must be able to meet the requirements set forth by the 1951 Refugee Convention and its 1967 additional Protocol[642]. These two instruments are mainly based on the satisfaction of three criteria, which will be here summarized. Firstly, individuals to enjoy protection must be outside their country of origins; however, natural hazards usually hit poor communities that do not have the means for moving across borders and therefore, are pushed to displace within the same country. Secondly, individuals to be recognized as refugees need to be unable or unwilling to receive protection from their country of origin due to a well-found fear of being persecuted by the same; consequently, it is implied that the persecutor is within their own State of origin. However, for instances of environmental disasters, it is difficult to advance the claim that 'own State's oppression' is the main cause of natural degradation when the harm has occurred because of a

[640] UN, High Commissioner for Refugees, *Convention Relating to the Status of Refugees,* Geneva, 1951.
[641] *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment*, [2015] NZSC 107, New Zealand: Supreme Court, July 20th, 2015.
[642] See note 640 and UN, High Commissioner for Refugees, *Protocol Relating to the Status of Refugees,* New York, 1967.

sudden or slow change in the environment. Thirdly, persecution must, without exclusion, arise from five specific elements: race, religion, nationality, membership of a particular social group, or political opinion. It is evident that none of these is relevant or connected in the case of environmental and climate change unless it is proved that the government or an agent under its control has been intentionally acting with the aim of provoking environmental degradation in areas inhabited by people whose race, religion, nationality, or membership of a particular social or political group is the first reason why the act has been conducted. However, as demonstrated in the case *Applicant of Kiribati v. Australian Refugee Review*[643], this appears unrealistic.

Despite the complex experience at the international level, the study has proved that a wider reference to the natural element as guarantor of protection is enshrined in different regional legal instruments[644], comprehending both hard and soft law. Among these, the 1984 Cartagena Declaration was crucial to further continue this investigation. As a matter of fact, its peculiarity derives from the reference to the component of violation of human rights as a ground to seek refugee protection. Although Human Rights Law does not guarantee for asylum seekers either the right to enter or to stay, as well as the content of refugee protection, it does 'open the doors' for a basis of complementary protection. Potentially, this could also emphasize the human rights dimension in matters of environmental and climate disruptions, as well as in migration governance.

Crucially, when talking about governance, most precisely global governance, it is necessary to clarify that this term describes a universal order originating from the interaction of different elements, such as institutions, processes, norms, agreements, and informal mechanisms, which aim at regulating actions towards a common good. Unquestionably, global governance encompasses activities that operate beyond national boundaries; therefore, it involves the harmonization of laws and practices among all the actors of the international system. As it has been widely asseverated, States are not the single actors of the international level; indeed, other non-State actors such as IOs, TNCs, and NGOs have been shaping and influencing the order of the current international system. For the sake of this thesis, it has been analyzed the involvement of

[643] AUSTLII, *Applicant of Kiribati v. Australian Refugee Review Tribunal (ARRT)*, 0907346 [2009] RRTA 1168, Australia: Refugee Review Tribunal, December 10th, 2009.

[644] AALCO, *Bangkok Principles on the Status and Treatment of Refugees* (Bangkok Principles), Bangkok, December 31st, 1966; OAU, *Convention Governing the Specific Aspects of Refugee Problems in Africa,* Addis Ababa, September 10th, 1969; OAS, *The Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama* (Cartagena Declaration), Cartagena, 1984; and others.

international actors in the formulation of policy responses for instances of environmental-induced migration, and the outcomes have highlighted the ever-growing participation in environmental law-making and enforcement process of NGOs. In particular, it has been scrutinized the case of *Urgenda v. The Netherlands*[645]. Its relevance arises from the fact that for the first time in the history of environmental litigations, the ECHR Articles 2 and 8 have been invoked to take actions against climate change, with the intention to extend their applicability to the collectivity, and not only to individuals. By consequence, the Court stated that the Netherlands did not have only national obligations to reduce GHG emissions derived from the 2015 Paris Agreement, but also international obligations under Human Rights Law. Furthermore, the Court of Appeal's judgment of the case has represented a very evolutive and innovative application of Human Rights norms in the context of environmental issues. Although this was a case of a national climate change litigation, it strongly influenced the international community; as a matter of fact, the role played by Urgenda was fundamental in paving the way for further juridical actions from the part of the civil society, both to increment the interest of the public opinion with regard to environmental issues and, to a certain extent, to serve as public guidance.

The repeated mention of the resort to human rights has brought this work to deeply assess the benefits of complementary protection, as a tool able to sets a human-rights based approach for the protection of those individuals that move for general environmental deterioration. In this regard, peculiar was the observation of the Former Special Rapporteur on human rights and the environment, John Knox, towards the establishment of the right to a healthy environment[646]. Fundamentally, the legal recognition of this right would pose primary attention on the natural element as the main source from which protection could be granted, as well as the obligations of environmental responsibility for States to secure a higher standard of environmental quality. Nevertheless, this right has not yet reached global acceptance, and only a few provisions at the regional level have already incorporated such right[647]. Subsequently, since the debate of the thesis

[645] *The State of the Netherlands v. Stichting Urgenda*, ECLI:NL:GHDHA:2018:2610, the Hague District Court, June 24th, 2015.

[646] UN, General Assembly, Seventy-Third Section, *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/73/188 New York, July 19th, 2018.

[647] See, among others: OAU, *The African Charter on Human and Peoples Rights* (Banjul Charter), Nairobi, adopted on June 27th, 1981, and entered into force on October 21st, 1986, Art. 24 on "the right to have a healthy environment", and OAS, General Secretariat, *Additional Protocol to the American Convention on Human Rights in the area of*

moved towards the environmental dimension of rights based on human rights treaties, it was investigated the process of 'greening' Human Rights Law, which is evolving in the national and regional jurisprudence. This process considers a change in the common understanding of the natural element, which becomes a subject of rights coexisting in the ecosystem alongside humankind. If this new approach would reach global acceptance, it would also be possible to establish new rights aimed at the preservation and protection of the environment. Therefore, although the missing legal reference of the environmental element at the international level, being the latter present in several national and regional systems, it means that the path for the recognition of a healthy environment as a ground to grant protection is not so far from being accomplished. How it has been evinced, this new paradigm is very hard to acknowledge from a political point of view under many aspects; consequently, the international community is divided into States that are reluctant in accepting legal obligations to undertake measures in the field of natural deterioration and climate change, and, on the other hand, Courts and national parliaments, also urged by the civil society, that have been successfully recognizing the right to a healthy environment. Despite this divergence, this work confides in the mechanism of cross-fertilization among regional Courts[648], which as it has been often demonstrated recognizes the interdependence, between the environment and human rights. Moreover, with the participation of State-led strategies such as the Nansen Initiative[649], the pathway to address and strengthening protection through the conceptualization of concrete frameworks and good practices seems to be achieved.

Howbeit, it is not certain that these strategies will have a long-term impact if not via a continuative high degree of cooperation and trust among actors at the local, national, regional, international level. What is certain is that a change in paradigm and in framing the problem of environmental change appears a more innovative and impact-solution, which will be built upon a shift in value with regard to the relation between nature and humankind. Linking socio-economic, political, and legal factors with ecological elements to find a mutual solution would finally solve the multicausal nature of environmental-induced migration. Finally, this issue will be understood under a more holistic perspective, which will allow the possibility of establishing the legal basis

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Economic, Social and Cultural Rights, El Salvador, adopted on November 17th, 1988, and entered into force on November 16th, 1999, Art. 11.

[648] See: IACtHR, *Kawas-Fernández v. Honduras*, San José, April 3rd, 2009.

[649] THE NANSEN INITIATIVE, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, Volume I, December 2015.

from which protection for environmental-induced migration will be granted, in order to finally close the current legal vacuum. Undoubtedly, further research will be required so as to assist and guide the implementation of this proposed approach.

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